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Wednesday
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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 89–2 of October 5, 1988

Determination of FY 1989 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act

Memorandum for the United States Coordinator for Refugee Affairs

In accordance with Section 207 of the Immigration and Nationality Act ("the Act") (8 U.S.C. 1157), and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

a. The admission of up to 94,000 refugees to the United States during FY 1989 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 1989 with federal refugee resettlement assistance under the Amerasian admissions program, as provided in paragraph (b) below.

Four thousand of these admissions numbers shall be set aside for private sector admissions initiatives. The admission of refugees using these 4,000 numbers shall be contingent upon the availability of private sector funding sufficient to cover the essential and reasonable costs of such admissions (so that no federal program funds shall be expended for such admissions).

b. The 90,000 refugee admissions numbers for which federal funding may be used shall be allocated among refugees of special humanitarian concern to the United States as described in the documentation presented to the Congress during the consultations that preceded this Determination and in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia Orderly Departure Program shall be reduced by one for each person admitted to the United States during FY 1989 with federal refugee resettlement assistance under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in Section 101(e) of Public Law 100–202 (Amerasians and their family members):

Africa	2,000
East Asia, First Asylum	28,000
East Asia, Orderly Departure Program	25,000
Eastern Europe/Soviet Union	24,500
Latin America/Caribbean	3,500
Near East/South Asia	7,000

Utilization of the 90,000 federally funded admissions numbers shall be limited by such public and private funds as shall be available to the Department of State and the Department of Health and Human Services for refugee and Amerasian admissions in FY 1989. You are hereby authorized and directed to advise the Judiciary Committees of the Congress of the intended allocation of numbers within the above regional ceilings in light of the availability of federal funding sufficient for up to 84,000 fully funded refugee and Amerasian admissions.

Unused admissions numbers allocated to a particular region within the 90,000 federally funded ceiling may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to any such reallocation.

The 4,000 privately funded admissions may be used for refugees of special humanitarian concern to the United States in any region of the world at any time during the fiscal year. You are hereby authorized and directed to notify the Judiciary Committees of the Congress in advance of the intended use of these numbers.

c. An additional 5,000 refugee admissions numbers shall be made available during FY 1989 for the adjustment to permanent resident status under Section 209(b) of the Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under Section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with Section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), I also specify, after appropriate consultation with the Congress, that the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States while still within their countries of nationality or habitual residence:

a. Persons in Vietnam and Laos who have past or present ties to the United States or who have been or currently are in reeducation camps in Vietnam or seminar camps in Laos, and their accompanying family members.

b. Present and former political prisoners and persons in imminent danger of loss of life in countries of Latin America and the Caribbean, and their accompanying family members.

c. Persons in the Soviet Union.

You are hereby authorized and directed to report this Determination to the Congress immediately and to publish it in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 5, 1988.

cc: The Secretary of State
The Attorney General
The Secretary of Health and Human Services

[FR Doc. 88-26136
Filed 11-8-88; 9:41 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5900 of November 5, 1988

National Alzheimer's Disease Month, 1988

By the President of the United States of America

A Proclamation

Alzheimer's disease ranks among the most severe of afflictions, because it strips people of their memory and judgment and robs them of the essence of their personalities. As the brain progressively deteriorates, tasks familiar for a lifetime, such as tying a shoelace or making a bed, become bewildering. Spouses and children become strangers. Slowly, victims of the disease enter profound dementia.

Today, Alzheimer's disease affects nearly 2½ million Americans. Half of all those admitted to nursing homes have this diagnosis. Among older individuals, Alzheimer's disease is the most common cause of severe intellectual impairment and contributes to the major causes of death.

Alzheimer's disease is precisely that, a disease of the brain. It is not a normal consequence of aging. Scientific studies of families with an abnormally high incidence of Alzheimer's disease have revealed a possible genetic connection in some patients to chromosome 21. Encouragingly, new knowledge about the brain's neurotransmitters—chemicals that ferry messages between nerve cells—is enabling scientists to develop experimental drugs to try to slow or halt the relentless progress of the disease.

Within the Federal Government, research into the cause, diagnosis, treatment, and ultimately the prevention of Alzheimer's disease is led by the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute on Aging, and the National Institute of Mental Health. Federal research efforts are augmented in the private sector by the work of voluntary health organizations committed to the conquest of dementing disorders. Through forceful leadership, these groups aid distressed families, inform the public, and attract young investigators to the challenge of Alzheimer's disease research.

To enhance public awareness of Alzheimer's disease, the Congress, by Senate Joint Resolution 261, has designated November 1988 as "National Alzheimer's Disease Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 1988 as National Alzheimer's Disease Month, and I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26137
Filed 11-8-88; 9:42 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5901 of November 5, 1988

National Diabetes Month, 1988

By the President of the United States of America

A Proclamation

Eleven million Americans suffer from diabetes. The disease strikes men, women, and children of all races. It takes many forms and is likely to have many causes, but the long-term outcome is the same—over the years, diabetes damages the heart, blood vessels, kidneys, eyes, and nerves. The disease and its complications affect individuals and our country heavily in terms of illness, disability, and economic loss.

Through research, we are learning how diabetes occurs, how it causes complications, and how in the future we may short-circuit its effects. We are also improving the understanding and management of diabetes, thereby helping people with this disease to minimize the threat of complications.

Nevertheless, much work lies ahead. As research continues to provide insights, the communication of new information to those in the forefront of managing this disease—primary care practitioners and people with diabetes—will permit new advances to be put into practice.

Through research we can find a way to eradicate this disease, and through public awareness we can keep those with diabetes healthier than ever before. The continued cooperation of the Federal Government, the scientific community, and private individuals and organizations makes our success in both these realms possible.

To increase public awareness of diabetes and to emphasize the need for continued research efforts, the Congress, by Senate Joint Resolution 272, has designated November 1988 as "National Diabetes Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 1988 as National Diabetes Month, and I call upon concerned governmental agencies, health care providers, and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26138
Filed 11-8-88; 9:43 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5902 of November 5, 1988

National Disabled Americans Week, 1988

By the President of the United States of America

A Proclamation

Americans are thankful for the inspiration and achievements of the millions of us who have disabilities. Through the years, and in more and more spheres of endeavor, disabled Americans have demonstrated their capabilities and their desire to make the most of the opportunities life can offer. Still, much more remains to be done by each of us so all citizens with disabilities can reach their potential.

To reach this goal, for the past 20 years a partnership between governments at all levels and the private sector, including groups and individual volunteers, has fostered opportunity for disabled citizens. National Disabled Americans Week, 1988, allows each of us to salute efforts aimed at developing and utilizing the skills and insights of disabled people—and to honor the spirit and accomplishments of Americans with disabilities in these efforts and in communities everywhere.

The Congress, by Senate Joint Resolution 319, has designated the period beginning November 6, 1988, and ending November 12, 1988, as "National Disabled Americans Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period beginning November 6, 1988, and ending November 12, 1988, as National Disabled Americans Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26139
Filed 11-8-88; 9:44 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegation of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule revises the delegations of authority by the Secretary of Agriculture to the Chief of the Forest Service to authorize the Chief to make technical amendments and corrections to final rules relating to the administration of Forest Service programs. This revision in the Chief's authority is made for purposes of administrative efficiency.

EFFECTIVE DATE: This rule is effective November 11, 1988.

FOR FURTHER INFORMATION CONTACT: Marian P. Connolly, Regulatory Officer, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 235–1488.

SUPPLEMENTARY INFORMATION: The delegations of authority from the Secretary of Agriculture to the Chief of the Forest Service are codified at 7 CFR 2.42. Presently, the Chief has authority to issue proposed rules and to issue final regulations prohibiting acts and omissions on National Forest Systems lands pursuant to 36 CFR 261.70. The Secretary, at 7 CFR 2.43(a), reserves the authority to issue final rules and regulations relating to the administration of Forest Service programs.

This rule revises the delegations to authorize the Chief to issue technical amendments and corrections to final rules governing Forest Service programs arising from inadvertence, omission, or typographical error. This revision in the Chief's authority is made for purposes of administrative efficiency. The Secretary's reservation of authority to issue substantive final rules and regulations governing Forest Service programs is not altered by this rulemaking.

This rule relates solely to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication of the Federal Register. Further, because this rule relates to internal agency management, it is exempt from review under Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus, is exempt from the provision of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7 of the Code of Federal Regulations is hereby amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

2. Revise paragraph (p) of § 2.42 to read as follows:

§ 2.42 Delegations of authority to the Chief of the Forest Service.

* * * * *

(p) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided at 36 CFR 261.70, and issue technical amendments and corrections to final rules issued by the Secretary pursuant to § 2.43(a) of this part arising from inadvertence, omission, or typographical error.

3. Revise paragraph (a) of § 2.43 to read as follows:

§ 2.43 Reservations of authority.

* * * * *

(a) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided at 36 CFR 261.70 and 2.42(p) of this part.

* * * * *

Date: November 1, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88–25874 Filed 11–8–88; 8:45 am]
BILLING CODE 3410–01–M

Farmers Home Administration

7 CFR Part 1980

Business and Industrial Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing eligible and ineligible loan purposes relating to Business and Industrial (B&I) loans. B&I regulations prohibit assistance for agricultural production, subject to certain exceptions. The intended effect of this action is to reduce the list of exceptions to eliminate commercial custom feedlots and similar operations.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Business and Industry Division, Room 6321–S, Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 475-3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor". This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign-based

enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Discussion of Rule

Under existing B&I program regulations, FmHA may not guarantee loans for agricultural production activities. Such activities are assisted through other programs of FmHA (Farmer Programs) which utilize human and other resources especially suited for assistance to the agricultural production sector. There are several exceptions to the exclusion of agricultural production from B&I assistance. One of these exceptions is for commercial custom feedlots.

Commercial custom feedlot activities are clearly a part of agricultural production. There is no statutory requirement requiring an exception for commercial, custom feedlots.

Additionally, FmHA experience with loans in this area has not been satisfactory. Since 1976, there have been 19 feedlot loan applications or preapplications submitted. Of the 19, 13 were either withdrawn or rejected, often after considerable expenditure of scarce FmHA resources. Six loans have been guaranteed since 1976. Of those, only one remains active. All five others have been closed out, one having failed.

FmHA published a proposed rule eliminating the commercial custom feedlot exception on May 4, 1988 (53 FR 15852), inviting comment through June 3, 1988. No comments were received.

For these reasons, FmHA deletes the exception for commercial custom feedlots, 7 CFR 1980.411(a)(9), and makes necessary technical and conforming amendments to Subpart E of Part 1980.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and Industry, Rural development assistance, Rural areas.

Therefore, Title 7, Chapter XVIII, Part 1980 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

§ 1980.411 [Amended]

2. Section 1980.411 is amended by removing paragraph (a)(9) and redesignating paragraphs (a)(10) through (a)(16) as (a)(9) through (a)(15).

3. Section 1980.412 is amended by removing paragraph (e)(5) and redesignating paragraph (e)(6) as (e)(5) and by revising the introductory text of paragraph (e) to read as follows:

§ 1980.412 Ineligible loan purposes.

* * * * *

(e) For agricultural production which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control, and/or management of farm and domestic animals. Exceptions to this definition are:

* * * * *

§ 1980.414 [Amended]

4. Section 1980.414(b) is amended by changing the reference "§ 1980.411(a)(13) and (14)" to read "§ 1980.411(a)(12) and (13)."

§ 1980.451 [Amended]

5. Section 1980.451(i)(19) is amended by changing the reference "§ 1980.411(a)(12)" to read "§ 1980.411(a)(11)."

§ 1980.452 [Amended]

6. Section 1980.452, ADMINISTRATIVE paragraph C is amended by changing the reference "§ 1980.411(a)(12)" to read "§ 1980.411(a)(11)."

Dated: September 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–25872 Filed 11–8–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 88–ASW–19]

Change to Time of Use for Restricted Area R–6312 Cotulla, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation of Restricted Area R–6312 Cotulla, TX, by adding the statement "other times by NOTAM" to the existing published hours. This provision enables R–6312 to be used for nighttime fighter training missions.

EFFECTIVE DATE: 0901 U.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On June 2, 1988, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to add the provision "other times by NOTAM" to the published time of designation (53 FR 20125). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.63 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations permits expanded use of R–6312 by adding the provision "other times by NOTAM" to the current published time of designation. This change accommodates nighttime fighter training requirements. It is projected that R–6312 will be used approximately three nights per week, two hours per night.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.63 [Amended]

2. Section 73.63 is amended as follows:

R-6312 Cotulla, TX [Amended]

By removing the current time of designation and substituting the following:

Time of designation. Sunrise to sunset; other times by NOTAM.

Issued in Washington, DC, on November 1, 1988.

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-25861 Filed 11-8-88; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1203 by revising Subpart 1203.H, "Delegation of Authority to Make Determinations in Original Classification Matters." This revision adds the Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance, and makes organizational title changes to the designated officials in § 1203.800(b).

EFFECTIVE DATE: November 9, 1988.

ADDRESS: NASA Security Office, Code NIS, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Erwin V. Minter, 202-453-2953.

SUPPLEMENTARY INFORMATION: Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1203

Classified information, Foreign relations.

For reasons set out in the preamble, 14 CFR Part 1203 is amended as follows:

PART 1203—INFORMATION SECURITY PROGRAM

1. The authority citation for Part 1203 continues to read as follows:

Authority: 42 U.S.C. 2451 *et seq.*, and E.O. 12356.

2. Subpart 1203.H is revised to read as follows:

Subpart H—Delegation of Authority To Make Determinations in Original Classification Matters

Sec.

Subpart H—Delegation of Authority To Make Determinations in Original Classification Matters

§ 1203.800 Delegations.

(a) The NASA officials listed in paragraph (b) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such actions shall be in accordance with currently applicable criteria, guidelines, laws, and regulations; and they shall be subject to any contrary determination that has been made by the Chairperson of the NASA Information Security Program Committee or by any other NASA official authorized to make such a determination.

(b) Designated Officials.

(1) *TOP SECRET Classification Authority.*

(i) Administrator.

(ii) Deputy Administrator.

(iii) Associate Deputy Administrator.

(iv) Chairperson, NASA Information Security Program Committee.

(2) *SECRET AND CONFIDENTIAL Classification Authority.*

(i) Officials listed in paragraph (b)(1) of this section.

(ii) Associate Administrator for Space Flight.

(iii) Associate Administrator for Space Science and Applications.

(iv) Associate Administrator for External Relations.

(v) Associate Administrator for Management.

(vi) Associate Administrator for Aeronautics and Space Technology.

(vii) Associate Administrator for Space Operations.

(viii) Associate Administrator for Space Station.

(ix) Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance.

(x) General Counsel.

(xi) Director, NASA Security Office.

(xii) Director, International Relations Division.

(xiii) Executive Secretary, NASA Information Security Program Committee.

(xiv) Field Installation Directors.

(xv) Manager, NASA Resident Office—JPL.

(xvi) Installation Security Classification Officers.

(xvii) Such other officials as may be delegated original classification authority.

(c) Written requests for original classification authority shall be forwarded to the Executive Secretary, NASA Information Security Program Committee, with appropriate justification appended thereto. The Executive Secretary will submit such requests to the Committee Chairperson for a determination by the Committee regarding the validity of the requests. Findings and recommendations of the Committee will then be submitted by the Committee Chairperson to the Administrator for approval.

(d) The Executive Secretary shall maintain a list of all delegations of original classification authority by name or title of the position held.

(e) The NASA Information Security Program Committee shall conduct a periodic review of delegation lists to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

(f) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

§ 1203.801 Redelegation.

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority is not authorized.

§ 1203.802 Reporting.

The officials to whom original classification authority has been delegated herein shall ensure that feedback is provided to the Administrator through the NASA Information Security Program Committee. The Chairperson of the Committee shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

Dale D. Myers,

Deputy Administrator.

November 3, 1988.

[FR Doc. 88-25898 Filed 11-8-88; 8:45 am]

BILLING CODE 7510-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 410 and 420

Amendment of Comprehensive Plan, Water Code of the Delaware River Basin and Basin Regulations—Water Supply Charges

AGENCY: Delaware River Basin Commission.

ACTION: Final rules.

SUMMARY: At its October 26, 1988 business meeting the Delaware River Basin Commission took two rule-making actions. The first amended its Comprehensive Plan and Water Code by adopting a drought management plan for the Christina River Basin, Chester County, Pennsylvania and New Castle County, Delaware. The second amended its Comprehensive Plan and Basin Regulations—Water Supply Charges by adopting water charges for water use at hydroelectric power plants.

As noted in the September 15 and October 18, 1988 Federal Register, the Commission held a public hearing on the proposed Christina River Basin Drought Management Plan on October 26, 1988. Resolution No. 88-26 amended the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin, which are referenced in 18 CFR Part 410, by the addition of a new Section 2.5.7 Drought Management Plan for the Christina River Basin, Chester County, Pennsylvania and New Castle County, Delaware, a summary of which follows.

The adopted drought management plan addresses the unique hydrologic circumstances of the Christina River Basin by establishing drought criteria based on both surface and ground water conditions within the Christina River Basin and setting forth actions to be undertaken on a coordinated basis as conditions dictate, notwithstanding the absence of the commission drought declaration. The plan is incorporated in the drought management plans of the Commonwealth of Pennsylvania and the State of Delaware and, by this action, in the commission's Comprehensive Plan. The amendment defines the area governed by the plan; plan administration; drought indicators, criteria and actions; enforcement and plan amendment procedures.

Anyone interested in obtaining a copy of the full text of the amendment may request a copy by writing or calling the Commission. See **FOR FURTHER INFORMATION CONTACT.**

As noticed in the June 16 and July 27, 1988 Federal Registers, the Commission held a public hearing on a proposed amendment to its Comprehensive Plan and Basin Regulation—Water Supply Charges to include water charges for water use at hydroelectric power projects on August 3, 1988. At that time, the hearing record was extended through September 20, 1988 for the submission of written comments. Resolution No. 88-29 added a new Section 420.51, hydroelectric power plant water use charges, to the Commission's Basin Regulations—Water Supply Charges. The amendment establishes annual base charges to owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission. In addition to the base charge, annual variable charges based on power generated at each facility would be assessed to owners of hydroelectric power plants that benefit from increased hydraulic head to the hydroelectric project as a result of investments by the Commission. Owners of hydroelectric power plants that derive additional benefits from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project would also be charged; however, no charges for increased flows would be required when charges for increased hydraulic head are in effect. Finally, charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way would be determined on a case-by-case basis. As adopted, the owner of any hydroelectric generating facility would receive a credit against the water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission. The amendment also includes provisions addressing payment of bills and exemptions from charges.

EFFECTIVE DATE: Both amendments became effective on October 26, 1988.

ADDRESS: Copies of the Commission's Water Code and Basin Regulations—Water Supply Charges are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

List of Subjects in 18 CFR Part 420

Water supply policy.

PART 420—[AMENDED]

1. The authority citation for 18 CFR Part 420 continues to read as follows:

Authority: Pub. L. 87-328 (75 Stat. 688).

2. Section 420.51 is added and an undesignated center heading is added preceding it to read as follows:

Hydroelectric Power Water Use Charges

§ 420.51 Hydroelectric power plant water use charges.

(a) *Annual base charges.* Owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission shall pay an annual base charge to the Commission. The amount of the base annual charge shall be one dollar per kilowatt of installed capacity.

(b) *Annual variable charges.* In addition to the base charge established in (a) of this section, annual charges based on power generated at each facility will be assessed as follows:

(1) Owners of hydroelectric power plants that benefit from increased hydraulic head available to the hydroelectric project as a result of investments by the Commission shall be charged one mill per kilowatt-hour of energy produced.

(2) Owners of hydroelectric power plants that derive additional benefits from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project shall be charged one-half mill per kilowatt-hour of energy produced. No charges for increased flows will be required when charges for increased hydraulic head are in effect.

(3) Charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way will be determined on a case-by-case basis as approved by the Commission.

(c) *Credits.* The owner of any hydroelectric generating facility shall receive a credit against the current year water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission for each calendar year.

(d) *Exemptions.* No payment will be required when hydroelectric power facility water use charges would amount to less than $25 per year. Retroactive charges will not be assessed for facilities which have already obtained Commission approval pursuant to Section 3.8 of the Delaware River Basin Compact. All hydroelectric generating projects that do not benefit from storage owned or partially owned by the Commission are exempt from these Commission water charges.

(e) *Payment of bills.* The amount due each year shall bear interest at the rate of 1% per month for each day it is unpaid beginning 30 days after the due date. Payments are due within 30 days of the end of each calendar year. Annual base charges will be prorated for periods less than a year.

2. This amendment shall be effective October 26, 1988.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,

Secretary.

November 2, 1988.

[FR Doc. 88-25881 Filed 11-8-88; 8:45 am]

BILLING CODE 6360-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 361

Recovery of Debts Owed to the United States Government by Employees

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to provide for the administration of its authority under 5 U.S.C. 5514 to recover debts owed to the United States by installment collections from the current pay account of Federal employees.

EFFECTIVE DATE: November 9, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide guidelines for the administration of the Board's authority under 5 U.S.C. 5514 for recovering debts owed to the United States by installment collections from the current pay accounts of its employees.

The Debt Collection Act of 1982, Pub. L. 97-365, amended section 5514 to permit interagency recovery of general debts due the United States. However, before agencies may use this new recovery procedure, certain due process rights must be extended to the debtor. The specific procedures in this regulation conform with the statutory provisions added to 5 U.S.C. 5514 by the Debt Collection Act, 5 CFR 550.1101 *et seq.*, and court decisions emphasizing the debtor's right to due process protection prior to the initiation of an action to recover for a debt (*Califano* v. *Yamasaki*, 442 U.S. 682 (1979)).

On March 9, 1984, the U.S. General Accounting Office and the Department of Justice adopted final regulations amending the Federal Claims Collection Standards (FCCS). See 4 CFR Chapter II. Although the installment collection from the current pay account of an employee described in these regulations is authorized by 5 U.S.C. 5514, such a collection is still an administrative offset as defined in 31 U.S.C. 3701(a)(1). Consequently, any collection matters involving salary offset not addressed in these regulations are governed by the FCCS.

In essence this rule provides that the Board shall not deduct moneys from the current pay of one of its employees in order to satisfy a debt owed by that employee to the United States until it has afforded the employee a pre-offset hearing before an impartial adjudicator. However, there are three types of collections against pay which are not subject to the full procedural rights provided by these regulations.

The first is a collection which has resulted from an overpayment caused by an employee's election of coverage or a change in coverage under a Federal benefit program. An employee who makes such an election is aware, or reasonably should be aware, that the election would cause a change in the amount withheld from his or her salary. Accordingly, it is appropriate to exclude from the scope of the salary offset due process procedures routine "catch-up" retroactive collections which are necessary solely because of brief, necessary, and inevitable processing delays.

A similar situation exists with regard to ministerial adjustments of pay rates of allowances, *e.g.*, credit union allotment, union dues deduction, etc., which cannot be placed into effect immediately because of normal processing delays. The debt in this case does not arise from any error committed by either the employee or the agency. The validity of the obligation is beyond reasonable dispute and the amount due is readily ascertainable.

For these two types of collections the rule provides for a limited procedure whereby the employee is notified in advance of the amount of the retroactive collection and may dispute the retroactive collection by notifying a specified official. Furthermore, it should be noted that in collections by salary offset made for reasons other than normal processing delays or, even if made by reason of normal processing delays but where the period for which retroactive deduction must be made will exceed four pay period, the full due process procedures set out in the final regulations shall apply.

Finally, where there is no question regarding credibility and veracity, no pre-offset hearing will be granted. In these cases the Board will make its pre-offset determination under this part based upon a review of the written record. Such a provision in the regulation is consistent with the FCCS (4 CFR 102.3(c)).

In addition, this rule also covers the situation in which the Board is not the creditor agency but merely the paying agency of the debtor. In such situations, the rule provides that this agency will commence deductions from the current pay account of an employee upon receipt of a properly certified debt claim as provided by 5 CFR 550.1108.

On January 5, 1988, the Board published this rule as a proposed rule and invited comments for 120 days ending May 4, 1988, (53 FR 143-147). No comments were received within the allotted time frame. The Board did receive on May 5, 1988, a comment from the American Federation of Government

Employees (AFGE), Local 375. AFGE suggested that the Board provide some limited due process when it is the paying agency (see § 361.17), and receives a claim from another agency. Specifically, AFGE recommends that when the Board receives such a claim and the affected employee disputes the debt, the Board should provide the documentation from the requesting agency which proves that the debt exists and give the employee 60 days to attempt resolution of the debt before offset would occur.

Under 5 CFR 550.1108(b)(3), if a paying agency receives a debt claim which meets the requirements of that section, it is not authorized to review the merits of the creditor agency's determination with respect to the validity of the debt. Under 5 CFR 550.1108(b), upon receipt of a properly certified debt claim the paying agency should schedule deductions to begin prospectively at the next officially established pay interval.

Section 361.17 of this part provides that if the Board receives a claim which meets the requirements of 5 CFR 550.1108, deductions will commence at the next established pay interval. In addition, the Board will notify the employee of receipt of the claim, the amount of the debt, and the date salary deductions will commence and the amount of the deductions. Furthermore, it is the agency's policy to permit the affected employee to view and make copies of any documentation provided by the creditor agency.

It is the Board's view that § 361.17 fully complies with the requirements of 5 CFR 550.1108 and therefore AFGE's suggestion was not adopted.

This regulation has been approved by the Office of Personnel Management.

This rule is not a major rule as defined under section 1(b) of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. In addition, any information required to be furnished under this rule is information to be provided by a government employee or agency and, therefore, is not covered by the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 361

Administrative practice and procedure, Government employees, Wages, Debt Collection.

1. For the reasons set forth in the preamble, Title 20, Chapter II, of the Code of the Federal Regulations is amended by adding a new Part 361 as follows:

PART 361—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY GOVERNMENT EMPLOYEES

Sec.

Authority: 5 U.S.C. 5514(b)(1).

§ 361.1 Purpose

These regulations, which implement 5 U.S.C. 5514, provide the standards and procedures which the Board will utilize to collect debts owed to the United States from the current pay accounts of its employees, including the current pay accounts of employees who owe debts to agencies other than the Board.

§ 361.2 Scope.

(a) *Coverage.* This part applies to agencies and employees as defined by § 361.3 of this part.

(b) *Applicability.* This part and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations shall be consistent with the provisions of the Federal Claims Collection Standards (FCCS).

(1) *Excluded debts or claims.* The procedures contained in this part do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1, *et seq.*), the Social Security Act (42 U.S.C. 301, *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests and claims to the U.S. General Accounting Office.* This part does not preclude an employee from requesting waiver of recovery of an overpayment under 5 U.S.C. 5584 or any other similar provision of law, or from questioning the amount of validity of a debt by submitting a subsequent claim to the U.S. General Accounting Office.

(3) *Compromise, suspension, or termination under the Federal Claims Collection Standards (4 CFR 101.1, et seq.).* Nothing in this part precludes the compromise, suspension or termination of collection actions where appropriate under the standards implementing 31 U.S.C. 3711, *et seq.* (4 CFR 101.1, *et seq.*).

§ 361.3 Definitions.

For purposes of this part, terms are defined as follows:

"Agency" means—

(a) An executive agency as defined by section 105 of Title 5, United States Code; including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department as defined in Section 102 of Title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in Section 610 of Title 28, United States Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(d) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(e) Other independent establishments that are entities of the Federal government.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

"Delinquent debt" means a debt which has not been paid by the date specified in the creditor agency's initial written notification, unless satisfactory arrangements for payment have been made by that date, or where, at any time thereafter, the employee fails to satisfy his or her obligations under a payment agreement with the creditor agency.

"Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the

case of an employee not entitled to basic pay, other authorized pay, remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.104 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of a Federal agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

"FCCS" means the Federal Claims Collection Standards jointly published by the Department of Justice and the U.S. General Accounting Office at 4 CFR 101.1, *et seq.*

"Paying agency" means the Federal agency or branch of the Armed Forces or Reserves employing the individual and disbursing his or her current pay account.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other similar law.

§ 361.4 Determination of indebtedness.

In determining that an employee is indebted, the Board will review the debt to make sure it is valid and past due.

§ 361.5 Notice requirements before offset.

The Board shall provide an employee written Notice of Intent to Offset Salary (Notice of Intent). The employee will be provided the notice at least thirty calendar days before the intended deduction is to begin. In addition, the notice must provide the following:

(a) That the Board has reviewed the records relating to the claim and has determined that a debt is owed, and the origin, nature, and amount of that debt;

(b) The Board's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Board's requirements concerning interest, penalties, and administrative costs, and notification that such assessment must be made unless such payments are excused in accordance with the FCCS;

(e) Advice as to the employee's or his or her representative's right to inspect and copy or to be provided copies of government records relating to the debt;

(f) If not previously provided, notification of the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Board, and documented in the Board's files (4 CFR 102.2(e));

(g) Advice that the Board will accept a repayment agreement which is reasonable in view of the financial condition of the employee at that time;

(h) If there is a statutory provision for waiver, cancellation, remission or forgiveness of the debt to be collected, advice that waiver may be requested within the period and by the procedure specified and explaining the conditions under which waiver, cancellation, remission or forgiveness is granted;

(i) Advice as to the employee's right to a hearing conducted by an official arranged by the Board (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) on the Board's determination of the debt, the amount of the debt, and the percentage of disposable pay to be deducted each pay period if a petition is filed as prescribed by the Board;

(j) Advice that the timely filing of a petition for hearing or a request for waiver (if the waiver statute or regulations are not "permissive" in nature) will stay the commencement of collection proceedings;

(k) Advice that a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than sixty days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(l) Advice as to the method and time period for requesting a hearing as provided for in section 361.5 and for requesting waiver, if it is available;

(m) Advice that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(3) Criminal penalties under §§ 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority;

(n) Advice as to other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(o) Advice that unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee. Such refunds will not bear interest unless required or permitted by law.

§ 361.6 Requests for waiver or hearing.

(a) A request for waiver or for a hearing must be made in writing and received by the Chief Financial Officer no later than thirty calendar days after the notice is sent to the employee. This time limit may, at the discretion of the Chief Financial Officer, be extended if the employee can show that the delay was caused by circumstances which were beyond the employee's control or because of the employee's failure to receive notice of the time limit. Any right to waiver or to a hearing is forfeited unless the time limits set forth in this paragraph are complied with.

(b) The employee's request for a hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(c) A request for a hearing under this paragraph is not a request for waiver. A request for waiver must state the basis for the request for waiver and whether a hearing is requested. If no request for a hearing is contained in the waiver request, no hearing will be provided.

(d) A hearing, if requested, will be an informal proceeding conducted by an administrative law judge or hearing official not under the control of the Board. The employee, or his/her representative, and the Board will be given full opportunity to present evidence, witnesses and argument.

§ 361.7 Written decision following a hearing.

Within thirty days after the hearing, the administrative law judge or hearing official shall issue a written decision stating the facts evidencing the nature and origin of the alleged debt; the amount and validity of the alleged debt; and the judge or hearing official's analysis, findings and conclusions with

respect to the employee's position on liability for the debt and with respect to his or her eligibility for waiver. The decision of the administrative law judge or hearing official shall be the final agency decision.

§ 361.8 Limitations on notice and hearing requirements.

(a) The procedural requirements of this part are not applicable to collections which result from:

(1) An employee's election of coverage or of a change in coverage under a Federal benefits program which requires periodic deductions from pay and which cannot be placed into effect immediately because of normal processing delays; and

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays.

(b) *Limited procedures.* If the period of the normal processing delay for which the retroactive deduction must be recovered does not exceed four pay periods, the procedures provided in §§ 361.4 and 361.5 of this part shall not apply, but the Board shall in advance of the collection issue a general notice that:

(1) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying a specified office or official; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future salary will be reduced to cover any excess pay or allowances received by the employee, the employee may dispute the amount of the retroactive collection by notifying a specified office or official.

(c) *Limitation on exceptions.* The exceptions described in paragraphs (a) and (b) of this section shall not include a recovery required to be made for any reason other than normal processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively withheld is less than four pay periods. Further, if normal processing delays exceed four pay periods, then the full procedures prescribed under §§ 361.4 and 361.5 of this part shall be extended to the employee.

§ 361.9 Exception to requirement that a hearing be offered.

When an employee is overpaid due to the hours worked reported on the payroll exceeding the actual hours worked, no pre-offset hearing must be granted since in such cases there is no question regarding credibility and veracity. In these cases the Board will make its determination under this part based upon review of the written record.

§ 361.10 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Board within thirty calendar days of the date of the Notice of Intent.

(b) *Board's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Board will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Board's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Board will balance the agency's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Board will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 361.11 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for hearing with the Board before the expiration of the period provided for in section 361.5, then deductions will begin after the hearing officer has provided the employee with a hearing and the hearing officer's final written decision is in favor of the Board.

(c) If an employee retires, resigns or his or her period of employment ends before collection of a debt is completed, offset shall be made from subsequent payments of any nature (*e.g.*, final salary payment, lump sum leave, etc.) due the employee from the Board to the extent necessary to liquidate the debt. If the debt cannot be liquidated by offset from any final payment due the employee from the Board, the Board shall liquidate the debt by administrative offset, pursuant to 31 U.S.C. 3716, from later payments of any kind which are due the employee from the United States.

§ 361.12 Procedures for salary offset: Types of collection.

A debt will be collected in a lump sum or in installments. Collection will be effected in one lump sum collection unless the employee is financially unable to pay in one lump sum, or if the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 361.13 Procedures for salary offset: Methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Board agree to alternative arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Board.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Board will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 361.14 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest will be charged in accordance with 4 CFR 102.13.

§ 361.15 Non-waiver of rights.

So long as there are no statutory or

contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 361.16 Refunds.

The Board will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Board is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 361.17 Coordination with other government agencies.

(a) *Board is paying agency.* (1) If the Board receives a claim which meets the requirements of 5 CFR 550.1108 from another agency, deductions shall begin prospectively at the next officially established pay interval. The employee will receive written notice that the Board has received a certified debt claim from a creditor agency. The notice will contain the amount of the debt and the date deductions from salary will commence and the amount of such deductions.

(2) If the Board receives a claim which does not meet the requirements of 5 CFR 550.1108, then the Board will return the claim to the creditor agency and inform the creditor agency that before any action is taken to collect the debt from the employee's current pay account, the procedures under 5 U.S.C. 5514 and 5 CFR Part 550 must be followed and a claim which meets the requirements of 5 CFR 550.1108 must be received.

(b) *Board is creditor agency.* When the Board is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Board provides the agency with a written certification that the procedures under this part have been followed and the Board has provided the other agency with a claim which meets the requirement of 5 CFR 550.1108.

Dated: November 2, 1988.

By Authority of the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-25886 Filed 11-8-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 885

[Docket No. R-88-1391; FR-2477]

Loans for Housing for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing projects that receive direct loans under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the United States Housing Act of 1937. This rule amends 24 CFR Part 885 to incorporate loan interest rate provisions contained in the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988).

DATES: Under Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become final until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Assisted Elderly and Handicapped Housing Division, Room 6118, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 426-8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Purpose

HUD's regulations at 24 CFR Part 885 govern projects that receive direct loans under Section 202 of the Housing Act of 1959 and housing assistance payments under Section 8 of the United States Housing Act of 1937. On February 5, 1988, President Reagan approved the Housing and Community Development Act of 1987 (Pub. L. 100-242) ("the Act"). This Act made several revisions to the section 202 loan program. This final rule implements statutory revisions to the method of calculating the interest rate to be used on section 202 loans.

The Department published an interim rule on June 1, 1988 (53 FR 19899) seeking public comments on interim provisions governing the interest rate calculation. No public comments were received. Accordingly, this final rule makes no changes to the provisions contained in the interim rule.

II. Findings and Certifications

Under 24 CFR 50.20(1), an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters categorically excluded from the environmental requirements of 24 CFR Part 50.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides HUD with additional flexibility in adjusting section 202 interest rates in periods of low market interest rates, and may result in lower section 202 interest rates for some Borrowers. The effect of these changes on small entities, however, should be minor.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule will not have a significant impact on the family. The final rule establishes the methodology that will be used to calculate the interest rate on section 202/8 loans to non-profit Borrowers and will have little, if any, impact on family formation, maintenance or general well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have federalism implications. The final rule establishes the methodology that will be used to calculate the interest rate on section

202/8 loans made by HUD to non-profit Borrowers and will not have any direct impact on the States.

This rule was listed as item 996 in the Department's Semiannual Agenda of Regulations published October 24, 1988 (53 FR 41974, 14997) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects in 24 CFR Part 885

Aged, Grant programs: housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

Accordingly, the Interim Rule published in the **Federal Register** on June 1, 1988 (53 FR 19899) is adopted as final without change.

* * * * *

Date: October 31, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-25968 Filed 11-8-88 ;8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 250 and 275

[T.D. AFT-277]

Implementation of Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule, which is being issued without notice, amends ATF regulations to implement a new form, Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico). Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico) is prescribed for use in conjunction with both the prepayment and deferred payment of excise taxes on distilled spirits, wines, beer, tobacco products, and cigarette papers and tubes brought into the United States from Puerto Rico.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jackie White, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7602).

SUPPLEMENTARY INFORMATION:

Background

The Internal Revenue Code of 1986 provides, in 26 U.S.C. 7652(a)(1), that articles of Puerto Rican manufacture coming into the United States, and withdrawn for consumption or sale, shall be subject to a tax equal to the internal revenue tax imposed in the United States upon like articles of merchandise of domestic manufacture.

Section 7652(a)(2) provides that the Secretary shall prescribe by regulation the mode for payment of excise taxes on, among other things, distilled spirits, wines, beer, tobacco products, and cigarette papers and tubes. Currently, ATF regulations in 27 CFR Parts 250 and 275 prescribe the use of eight different tax return forms for the collection of these taxes. In order to simplify returns processing, AFT consolidated these eight returns into one new form, Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

Section 7652 allows for the deposit of excise taxes into the Treasury of Puerto Rico on articles produced in Puerto Rico and brought into the United States. Payments to the Treasury of Puerto Rico of excise taxes on articles containing distilled spirits will be permitted only if at least 92 percent of the alcoholic content of such articles is attributable to rum and if they are not articles for which drawback of tax will be claimed in accordance with 26 U.S.C. 5134. In addition, an article not containing distilled spirits (e.g. wine, beer, and tobacco products) will not be considered as produced in Puerto Rico unless the sum of the cost or value of the materials produced in Puerto Rico plus the direct costs of processing operations performed in Puerto Rico equals or exceeds 50 percent of the value of the article at the time it is brought into the United States.

Since the taxes on many products brought into the United States from Puerto Rico are not entitled to cover over into the Treasury of Puerto Rico, Form 5000.25 has been designed in a manner that will require the taxpayer (in the case of wine, beer or tobacco products) to indicate the amount of excise taxes attributable to such products that are entitled to cover over. In the case of distilled spirits, the taxpayer shall be required to provide the total proof gallons of spirits which meet the 92 percent rum criterion. It will be this proof gallon figure that will be used in conjunction with data on other Puerto Rican rum brought into the United States in determining the amount to be covered over to the Puerto Rican Treasury.

Obsolete Forms

Implementation of Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico), makes the following forms obsolete.

ATF F 5110.52, Deferred Tax Return—Distilled Spirits (Puerto Rico)
ATF F 5110.53, Prepayment Tax Return—Distilled Spirits (Puerto Rico)
ATF F 2927 (5120.33), Deferred Tax Return—Wine (Puerto Rico)
ATF F 2928 (5120.34), Prepayment Tax Return—Wine (Puerto Rico)
ATF F 2929 (5130.17), Deferred Tax Return—Beer (Puerto Rico)
ATF F 2930 (5130.21), Prepayment Tax Return—Beer (Puerto Rico)
ATF F 2988 (5200.5), Deferred Tax Return—Puerto Rican Cigars and Cigarettes
ATF F 3073 (5200.8), Prepayment Tax Return—Puerto Rican Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes

These forms may not be used for the payment of tax liabilities incurred on or after January 1, 1989.

Regulatory Changes

Implementation of Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico) requires several regulatory changes. Every regulation in Title 27 of the Code of Federal Regulations containing an obsolete form number has to be amended. In addition, some sections of regulations are being revised to clarify the fact that Form 5000.25 is to be used as both a prepayment and a deferred payment or semimonthly return.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in: (a) An annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512-0497.

Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, with copies of the Chief, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

The collection of information in this regulation is in 27 CFR 250.81, 250.96, 250.105, 250.110 through 250.113, 275.105, 275.106, 275.112, and 275.115a. This information is required by the Bureau of Alcohol, Tobacco and Firearms for the collection of excise taxes on distilled spirits, wine, beer, tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico for consumption and sale. This information will be used by the government to ensure that the correct excise tax has been timely paid and received into the Treasury. The likely respondents are small businesses or organizations.

Estimated total annual reporting burden: 138 hours.
Estimated average annual burden hours per respondent: 6.25 hours.
Estimated number of respondents: 22.
Estimated annual frequency of responses: 25.

Administrative Procedure Act

This Treasury decision consolidates eight different tax return forms into one form and makes minor editorial changes. Accordingly, it is found that it is unnecessary and impracticable to issue this rule with notice and public procedure under 5 U.S.C. 553(b).

Drafting Information

The principal author of this document is Jackie White, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 250

Administative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Drugs, Electronic fund transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bond, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 275

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

Issuance

27 CFR Chapter I, Subchapter M is amended as follows:

PART 250—[AMENDED]

¶ 1. The authority citation for Part 250 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

* * * * *

¶ 2. The table of sections is amended to revise the title of § 250.112 to read as follows:

Sec.

* * * * *

§ 250.112 Returns for semimonthly periods.

* * * * *

¶ 3. Section 250.81 and the Office of Management and Budget control number following the section are revised to read as follows:

§ 250.81 Prepayment of tax and release of spirits.

(a) *Action by proprietor.* Where the distilled spirits are to be released after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of ATF Form 5110.51 and execute the statement that such tax is being prepaid. The proprietor shall then prepare ATF Form 5000.25 in duplicate, and send the original with all copies of ATF Form 5110.51 and any package gauge record as provided in § 250.164a and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations.* On receipt of ATF Forms 5110.51, 5000.25 and any package gauge record, with remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 5110.51. The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 5110.51 and 5000.25 and forward the remaining copies of ATF Form 5110.51 in accordance to the instructions on the form.

(c) *Action by revenue agent.* On receipt of ATF Form 5110.51 executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the ATF Form 5110.51 and release the spirits for shipment to the United States. The completed ATF Form 5110.51 shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512-0210 and 1512-0497)

¶ 4. Section 250.96 is revised to read as follows:

§ 250.96 Prepayment of tax—release of wine.

(a) *Action by proprietor.* Where the wine is to be withdrawn from bonded storage after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of ATF Form 2900 (5100.21) and execute the statement that such tax is being prepaid. The proprietor shall then prepare ATF Form 5000.25 in duplicate and send the original with all copies of ATF Form 2900 (5100.21) and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations.* On receipt of ATF Forms 2900 (5100.21) and 5000.25, and remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall

execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 2900 (5100.21). The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 2900 (5100.21) and 5000.25 and forward the remaining copies of ATF Form 2900 (5100.21) in accordance with the instructions on the form.

(c) *Action by revenue agent.* On receipt of ATF Form 2900 (5100.21) executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the ATF Form 2900 (5100.21) and release the wine for the purpose authorized on the form. The completed ATF Form 2900 (5100.21) shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0149 and 1512–0497)

¶ 5. Section 250.105 is revised to read as follows:

§ 250.105 Prepayment of tax—release of beer.

(a) *Action by brewer.* Where the beer is to be withdrawn from bonded storage after payment of the computed tax the brewer shall enter the amount of such computed tax on all copies of ATF Form 2900 (5100.21) and execute the statement that such tax is being prepaid. The brewer shall then prepare ATF Form 5000.25 in duplicate and send the original with all copies of ATF Form 2900 (5100.21) and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations.* On receipt of ATF Forms 2900 (5100.21) and 5000.25, and remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 2900 (5100.21). The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 2900 (5110.21) and 5000.25 and forward the remaining copies of ATF Form 2900 (5100.21) in accordance with the instructions of the form.

(c) *Action by revenue agent.* On receipt of ATF Form 2900 (5100.21) executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the ATF Form 2900 (5100.21) and release the beer for the purpose authorized on the form. The completed ATF Form 2900 (5100.21) shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0149 and 1512–0497)

§ 250.110 [Amended]

¶ 6. Section 250.110 is amended by replacing, in the first sentence, the words "ATF Form 5110.53, 2928, or 2930" and inserting in their place the words "AFT Form 5000.25", and by revising the parenthetical citation of Office of Management and Budget control numbers to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0497)

§ 250.111 [Amended]

¶ 7. Section 250.111 is amended by replacing, in the first sentence, the phrase "semimonthly or prepayment return" with the phrase "tax return".

¶ 8. Section 250.112 and the Office of Management and Budget control number following the section are revised to read as follows:

§ 250.112 Returns for semimonthly periods.

(a) *Returns.* The taxes imposed by 26 U.S.C. 7652(a), (equal to the taxes imposed in the United States by 26 U.S.C. 5001(a)(1), 5041, or 5051), the payment of which has been deferred under the provisions of §§ 250.80, 250.95 or 250.104 of this part, shall be paid pursuant to a return on ATF Form 5000.25 prepared in accordance with the instructions on the form.

(b) *Periods.* The periods to be covered by returns on ATF Form 5000.25 shall be semimonthly; such periods to run from the 1st day through the 15th day of each month and from the 16th day through the last day of each month.

(c) *Filing.* (1) The original of ATF Form 5000.25, with remittance covering the full amount of the tax, shall be filed with the Chief, Puerto Rico Operations not later than the 14th day after the last day of the return period except as provided by paragraph (d) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day within is not a Saturday, Sunday, or legal holiday.

(2) The tax shall be paid in full by remittance at the time the return is filed, unless the proprietor is required to make remittances by electronic fund transfer in accordance with § 250.112a.

(3) The remittance may be in any form the Chief, Puerto Rico Operations, is authorized to accept under the provisions of § 70.66 (Payment by check or money order) and which is acceptable to the Chief, Puerto Rico Operations. A remittance by check or money order, shall be made payable to the "Bureau of Alcohol, Tobacco and Firearms."

(4) When the return and remittance are delivered by U.S. mail to the office of the Chief, Puerto Rico Operations, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return and remittance were mailed shall be treated as the date of delivery.

(d) *Special rule for return period ending December 15, 1986.* The last day for filing AFT Form 5110.52 with remittance covering the return period December 15, 1986 is January 14, 1987.

(e) *Default.* Where a taxpayer has defaulted in any payment of tax under this section, during the period of such default and until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment of tax under this section, the tax shall be prepaid by such taxpayer in accordance with the provisions of § 250.113. During such period, distilled spirits, wine, or beer shall not be released from the proprietor's bonded premises before the proprietor has paid the tax thereon. In the event of default, the Chief, Puerto Rico Operations shall immediately notify the Secretary and the revenue agent at the premises that tax is to be prepaid until further notice, and upon a finding that the revenue will not be jeopardized by resumption of deferred payment or tax under this section, the Chief, Puerto Rico Operations shall notify the Secretary and the revenue agent that deferred payment may be resumed.

(Approved by the Office of Management and Budget under control number 1512–0497)

(Aug. 16, 1954, Ch. 736, 68A Stat. 775, (26 U.S.C. 6301); June 29, 1956, Ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

§ 250.112a [Amended]

¶ 9. Section 250.112a is amended by replacing in paragraphs (a) (3) and (c) (1) the words "semimonthly return form or prepayment return form" with the words "tax return".

§ 250.113 [Amended]

¶ 10. Section 250.113 is amended by replacing in paragraph (c) the phrase "Form 5110.53" with the phrase "ATF Form 5000.25", by replacing in paragraph (d) the phrase "Form 2928" with the phrase "ATF Form 5000.25", by replacing in paragraph (e) the phrase

"Form 2930" with the phrase "ATF Form 5000.25.", by replacing in paragraph (f) the phrase "§ 250.112(e)" with the phrase "§ 250.112(c)", and by adding at the end of the section the parenthetical citation of Office of Management and Budget control number to read as follows:

(Approved by the Office of Management and Budget under control number 1512-0497)

PART 275—[AMENDED]

¶ 11. The authority citation for Part 275 is revised to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

¶ 12. Section 275.105 is revised to read as follows:

§ 275.105 Prepayment of tax.

To repay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products and cigarette paper and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Chief, Puerto Rico Operations, a tax return, ATF Form 5000.25, in duplicate, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes. The Chief, Puerto Rico Operations will present a receipted copy of the return to the person filing the return and paying the tax and retain the original.

(Approved by the Office of Management and Budget under control number 1512-0497)

¶ 13. Section 275.106 is revised to read as follows:

§ 275.106 Inspection of shipment and certification of prepayment by ATF officer.

The taxpayer will prepare ATF Form 3075 (5200.9), in quintuplicate, identifying the tobacco products and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid. The ATF officer assigned to inspect the shipment shall obtain the receipted copy of the tax return from the taxpayer and verify with ATF Form 3075 (5200.9) that the proper tax has been prepaid. After verification of the tax return with ATF Form 3075 (5200.9), the ATF officer will return the receipted copy of the tax return to the taxpayer. The ATF officer will then present one copy of ATF Form 3075 (5200.9) to the taxpayer for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; promptly mail two copies to the district director of customs at the port of entry; mail one copy to the regional director (compliance) of the region wherein the customs collection headquarters is located; and retain the remaining copy. The ATF officer, will then prepare for each shipping container, a statement on ATF Form 3074 (5200.6) that the tax has been prepaid, and show the other information required by that form. The shipper shall affix the completed ATF Form 3074 (5200.6) to the outside of each shipping container in which the articles are packed. Such statement, ATF Form 3074 (5200.6), shall be affixed to the outside container used in the shipment of freight in bulk (crate, packingbox, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container. Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

§ 275.112 [Amended]

¶ 14. Section 275.112 is amended by removing the third sentence of the paragraph, by replacing in the paragraph the phrase "Form 2988" with the phrase "ATF Form 5000.25" wherever it appears, by replacing in the last sentence, the phrase "New York, NY," with the phrase "Atlanta, GA,", and by adding at the end of the section the parenthetical citation of the Office of Management and Budget control number to read as follows:

(Approved by the Office of Management and Budget under control number 1512-0497)

§ 275.115a [Amended]

¶ 15. Section 275.115a is amended by replacing in paragraphs (a)(3), (b)(3) and (c)(1) the phrase "semimonthly return form or prepayment return form" and inserting in its place the phrase "tax return".

August 31, 1988.

Stephen E. Higgins

Director.

Approved: September 26, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88-25656 Filed 11-8-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS SENTRY (MCM-3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a mine countermeasure ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P. C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, has certified that USS SENTRY (MCM-3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed

herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS SENTRY	MCM-3							X	62

Dated: November 1, 1988.

H. Lawrence Garrett, III,

Under Secretary of the Navy.

[FR Doc. 88-25859 Filed 11-8-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80990-8227]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency final rule.

SUMMARY: NOAA amends the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) to modify, temporarily, the boundary of the Tortugas shrimp sanctuary (established by the FMP) to reduce the area closed to trawl fishing. This action will enable fishermen to harvest marketable-size shrimp from a small area that otherwise would be closed.

EFFECTIVE DATES: November 4, 1988 except § 658.22(b) and designation of (a), which is effective from November 4, 1988 through February 2, 1989.

ADDRESSES: Copies of the environmental assessment may be obtained from Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Reporting forms, sea turtle identification guides, and resuscitation techniques may be requested from, and completed forms should be sent to, the Director, Galveston Laboratory, NOAA Fisheries, Avenue U, Galveston, TX 77550.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery is managed under the FMP and its implementing regulations at 50 CFR Part 658, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP, the Director, Southeast Region, NMFS, (Regional Director), may modify by no more than 10 percent the geographical scope of the Tortugas shrimp sanctuary specified at § 658.22, after (1) consultation with the Gulf of Mexico Fishery Management Council (Council), (2) consideration of specified criteria, and (3) determination that benefits may be increased or adverse impacts decreased by the modification.

The primary purpose of establishing the sanctuary was to protect small shrimp and allow them to attain a larger, more valuable size prior to harvest. The FMP stipulates that, prior to any modification of the sanctuary, NMFS will monitor and assess the impacts of the closure and advise the Council of its findings. The Council may also consider the advice of its Shrimp Advisory Panel regarding the findings.

When the sanctuary was partially opened in 1983–1984, NMFS determined that harvestable populations of shrimp occur periodically within a small portion of the sanctuary—a fact strongly supported by public testimony. Fishermen contend that shrimp from within this portion of the sanctuary emigrate to untrawlable areas and are unavailable to the fishery. Poor recruitment of shrimp to the Tortugas fishery has resulted in 2 consecutive years of poor production and economic loss to the adjacent shrimp ports. As identified in the FMP, poor recruitment in this unique fishery is more a function of environmental forces than of overfishing. Opening the area of the sanctuary containing all sizes of shrimp is consistent with optimum yield because it will allow shrimpers to obtain, on a temporary basis, a more valuable catch per unit of effort.

Thus, the Regional Director, after consulting with the Council and considering the criteria for modifying the sanctuary, has determined that the small portion of the sanctuary that periodically contains harvestable shrimp should be opened for 90 days. This area is less than 10 percent of the total geographical scope of the sanctuary and such modification will increase the benefits by optimizing the yield of shrimp recruited to the fishery. This temporary geographic modification is consistent with Objective 1 of the FMP because it provides temporary economic relief to the stressed fishermen while continuing to optimize the yield of shrimp recruited to the fishery.

To maximize its intended economic benefits, this rule should be implemented on November 1, 1988, or as soon thereafter as possible. November 1 marks the onset of the 6-month period when peak landings occur. Due to the time consumed by preparation of the Biological Opinion regarding potential impacts of the proposed rule on endangered and threatened sea turtles, the normal Administrative Procedure Act requirement for publication of proposed regulations cannot be followed if the proposed opening is to occur in a timely and effective manner. NOAA finds that it is both impracticable and against the public interest to publish proposed regulations and receive public comment at this time. For this reason, a final rule is being promulgated to remain in effect for 90 days. NOAA also finds that opening a portion of the Tortugas shrimp sanctuary to trawl fishing has the effect of relieving a restriction, and, therefore, NOAA is waiving the normal Administrative Procedure Act

requirement for delayed effectiveness after publication of this final rule.

Endangered Species Impacts

The modification of the geographic size of the Tortugas shrimp sanctuary is considered to be a "federal action" under the Endangered Species Act (ESA). Therefore, consultation under section 7 of the ESA is required to ensure that such action is not likely to jeopardize the continued existence of any endangered or threatened species or result in the adverse modification of the critical habitat of such species. A Biological Opinion is then written that concludes whether or not the proposed activity is likely to jeopardize such species or adversely affect their habitat. When any Federal action may incidentally take listed species, NOAA Fisheries must issue a statement in the Biological Opinion that specifies the impact (amount or extent) of such taking and the terms and conditions that must be followed to reduce such impact. Only incidental taking by the Federal agency or applicant that complies with the specified terms and conditions of this statement is authorized and exempt from the taking prohibition of the ESA.

NOAA Fisheries has written a Biological Opinion which establishes two conditions on the incidental take of sea turtles in the Tortugas sanctuary:

(1) If an endangered or threatened sea turtle is encountered in a shrimp trawl, the sea turtle resuscitation procedures and release techniques established for threatened sea turtles must be followed (50 CFR 227.72(e)(1)).

(2) If sea turtles are encountered, a report giving the date of take and an account of the status of each turtle must be provided to NOAA Fisheries on return to port after each fishing trip.

The Biological Opinion also contains a note that there are regulations which require the use of turtle excluder devices (TEDs) and other conservation measures in certain areas and at certain times. The implementation of these regulations has been delayed by Congress until May 1, 1989. At that time, the regulations will become effective for the opened portion of the Tortugas sanctuary as well.

Anticipated Extension of the Temporary Geographic Modification and Implementation of the Reporting Requirement Contained in the Biological Opinion

This emergency action will be effective for 90 days. The Biological Opinion for this action requires that a report must be provided in order for individual fishermen to be exempt from the taking prohibitions of the ESA whenever they incidentally take a sea turtle in the opened portion of the Tortugas sanctuary. This report constitutes a collection-of-information requirement subject to the Paperwork Reduction Act. A request is being prepared for submission to the Office of Management and Budget for approval. Since it is impracticable to satisfy the requirements of the Paperwork Reduction Act and the ESA in a timely manner, this geographic modification is effective only for 90 days. As soon as possible during this period, the temporary geographic modification established by this emergency rule will be extended and the reporting requirement will be implemented through a notice of proposed rulemaking, giving interested persons an opportunity to comment, and a final rule.

In the meantime, a fisherman fishing for shrimp in the opened portion of the Tortugas shrimp sanctuary, who incidentally takes a Kemp's ridley, hawksbill, leatherback, loggerhead, or green turtle, can avoid violating the ESA restrictions on takings of these species by making a voluntary report of that take and following the resuscitation procedures. A voluntary report should give the date of take and an account of the status of each turtle and should be provided to: Director, Galveston Laboratory, NOAA Fisheries, Avenue U, Galveston, Texas 77550, on return to port after each fishing trip. Reporting forms, sea turtle identification guides, and resuscitation techniques are available from the Director, Galveston Laboratory.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator), has determined that this rule is necessary to respond to an emergency and that it is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The Assistant Administrator finds that notice and opportunity for public comment are impracticable and contrary to the public interest pursuant to section 553(b)(B) because of the necessity of conducting a Section 7 Consultation under the ESA and completing a Biological Opinion while also providing timely economic relief to a segment of the shrimp industry. Because this is a substantive rule which relieves a restriction, the Assistant Administrator also finds that it is not necessary to delay its effective date for 30 days, pursuant to the provision of section 553(d)(1) of the Administrative Procedure Act.

Because of the emergency need for implementation of this rule as soon as possible after November 1, 1988, it is exempt from the normal review procedures of E.O. 12291, as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comments.

The Council prepared an Environmental Assessment (EA) for this rule and, based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. Copies of the EA are available (see **ADDRESSES**).

This rule does not contain a collection-of-information requirement and therefore is not subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Florida. This determination was submitted for review by Florida under section 307 of the Coastal Zone Management Act. Florida failed to comment within the statutory time period and concurrence is therefore implied.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing.

Dated: November 4, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO [AMENDED]

1. The authority citation for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.22, effective from November 4, 1988 through February 2, 1989, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding, effective from November 4, 1988 through February 2, 1989, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point F at 24°50.7'N. latitude, 81°51.3'W. longitude to point Q at 24°46 7'N. latitude, 81°52.2'W. longitude (the intersection of the extension of the sanctuary boundary line from point N to point F (in a direction of 191° from true north) and the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition (March 21, 1987) of NOAA chart 11439, to point R at 24°44.7'N. latitude, 82°10.0'W. longitude; thence north to point S at 24°45.1'N. latitude, 82°10.0'W. longitude (the intersection of 82°10.0'W. longitude and the sanctuary boundary line from point F to point G) (see Figure 1).

3. Figure 1 is revised to read as follows:

BILLING CODE 3510-22-M

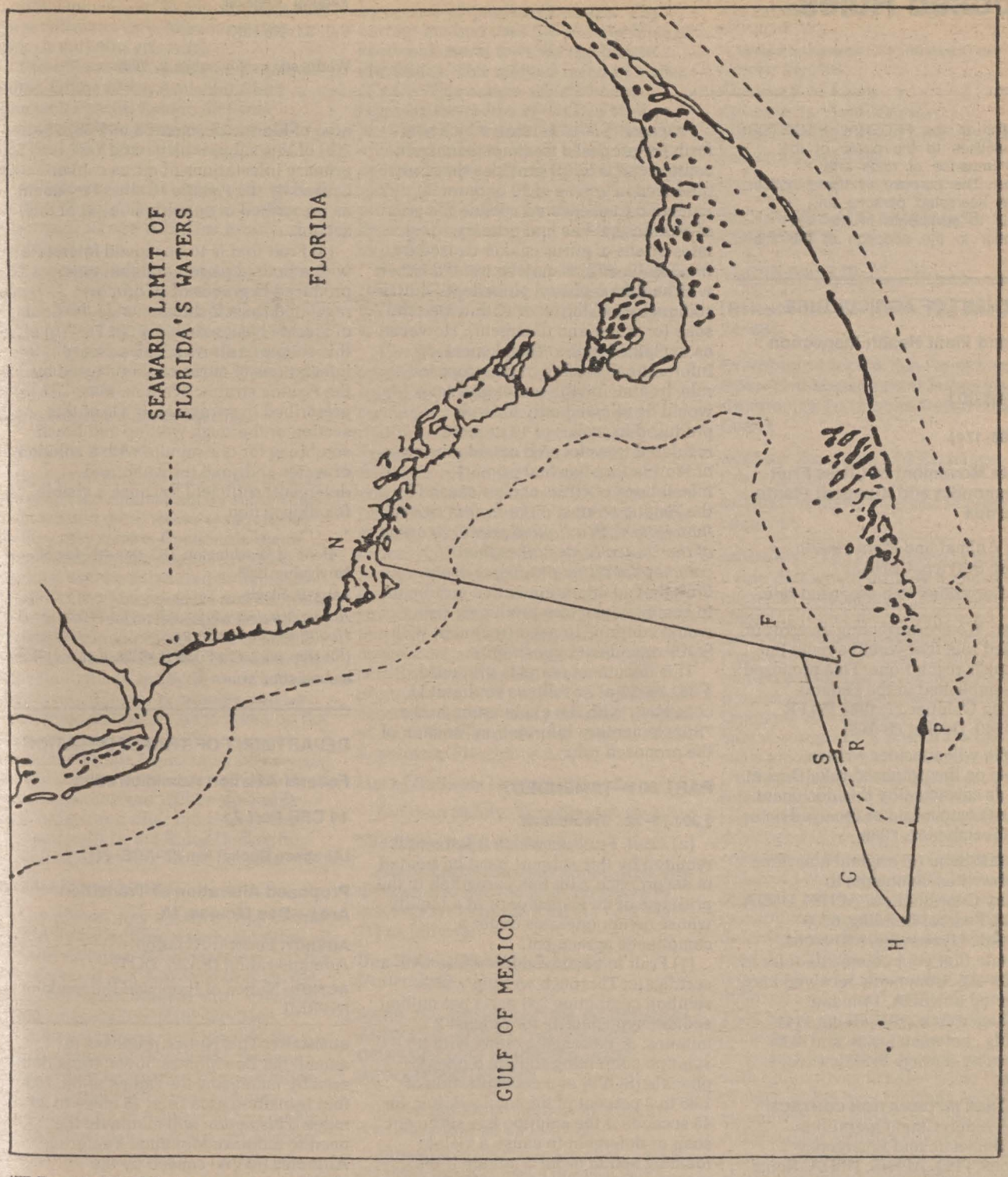

FIGURE 1. TORTUGAS SHRIMP SANCTUARY

[FR Doc. 88-25917 Filed 11-4-88; 4:10 pm]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 88-174]

Interstate Movement of Citrus Fruit and Calamondin and Kumquat Plants From Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correction to a proposed rule.

SUMMARY: We are correcting an error in a proposed rule that would amend the citrus canker regulations. This proposed rule was published in the **Federal Register** on October 21, 1988 [53 FR 41538-41549, Docket 88-105]

DATES: We will consider written comments on the proposed rule (Docket 88-105), as corrected by this document, if they are postmarked or received on or before November 21, 1988.

ADDRESSES: Send an original and three copies of written comments to Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket 88-105. Comments received may be inspected at USDA, 14th and Independence Ave., SW, Room 1141 South Bldg., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Bldg., 6505 Belcrest Rd., Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION: We published in the **Federal Register** on October 21, 1988 [53 FR 41538-41549, Docket No. 88-105] a proposed rule that would amend the citrus canker regulations (contained in 7 CFR Part 301, Subpart 301.75).

Proposed § 301.75-12(a), which sets forth the proposed treatments for fruit, contains an error. It provides that fruit produced in groves of 10 or more regulated trees located outside the area of Florida that has had primary infestations of citrus canker caused by the Asiatic strains may be treated either with sodium o-phenyl phenate (SOPP) or sodium hypochlorite, or with water and soap (or water and detergent). However, as explained in the "Supplementary Information" section of the proposed rule, treatment with water and soap would be allowed only for fruit produced in groves of 10 or more regulated trees located outside the area of Florida that has had primary infestations of citrus canker caused by the Asiatic strains, *if the fruit is moved interstate with a limited permit to areas of the United States other than commercial citrus-producing areas.* Fruit moved interstate with a certificate to commercial citrus-producing area would continue to need treatment with SOPP or sodium hypochlorite.

This document corrects proposed § 301.75-12(a) as follows so that it is consistent with the explanation in the "Supplementary Information" section of the proposed rule:

PART 301—[AMENDED]

§ 301.75-12 Treatments.

(a) *Fruit.* Fruit for which treatment is required by this subpart must be treated in accordance with this paragraph in the presence of an inspector or at a facility whose owner operates under a compliance agreement.

(1) Fruit to be moved interstate with a certificate: Thorough wetting with a solution containing 200 parts per million sodium hypochlorite for at least 2 minutes; or thorough wetting with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2 percent of the total solution for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap or detergent to cause a visible foaming action.

Note: Sodium hypochlorite and SOPP must be applied in accordance with label directions.

(2) Fruit that is to be moved interstate with a limited permit and that was produced in groves located within the area of Florida designated in § 301.75-7(b) of this subpart as having had primary infestations of citrus canker caused by the Asiatic strains: Treatment as prescribed in paragraph (a)(1) of this section.

(3) Fruit that is to be moved interstate with a limited permit and that was produced in groves of 10 or more regulated trees located outside the area of Florida designated in § 301.75-7(b) of this subpart as having had primary infestations of citrus canker caused by the Asiatic strains: Treatment as prescribed in paragraph (a)(1) of this section or thorough wetting and brush scrubbing for one minute with a solution of water and soap (or water and detergent) sufficient to cause a visible foaming action.

* * * * *

Done at Washington, DC, this 4th day of November 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-25871 Filed 11-8-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ACE-11]

Proposed Alteration of Transition Area—Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to amend the Des Moines, Iowa, transition area by increasing the radius of the 700-foot transition area from 15 miles to 20 miles. This action will eliminate the need to increase Minimum Vectoring Altitudes (MVA) caused by the application of a new method for determining the elevation of the general terrain.

DATE: Comments must be received on or before December 12, 1988.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air

Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Des Moines, Iowa, transition area. A change has been made in the method for evaluating the elevation of general terrain. In the past, the general terrain has been determined by review of quadrangle charts. The current method uses the contour lines of sectional charts to verify the terrain elevations. This method result in higher MVA's. This action, which would increase the radius of the Des Moines, Iowa, 700 foot transition area from 15 miles to 20 miles, would eliminate the need to increase the MVA of 2,500 feet within this radius. This action would provide ample area for descent to the final approach intercept at a reasonable altitude.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that the proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a subtantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

Des Moines Municipal Airport [Amended]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; EO 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Des Moines, Iowa

That airspace extending upward from 700' above the surface within a 23-mile radius of the Des Moines Municipal Airport ASR radar site (latitude, 41°32'26"N; longitude, 093°39'10" W).

Issued in Kansas City, Missouri, on October 25, 1988.

Clarence E. Newbern

Manager, Air Traffic Division.

[FR Doc. 88-25862 Filed 11-8-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-16619; File No. S7-24-88]

Exemptions for Certain Registered Open-End Management Investment Companies To Impose Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and request for comment.

SUMMARY: The Commission is proposing a rule that would provide a registered open-end management investment company (other than a registered insurance company separate account) ("mutual fund" or "fund"), and certain related persons, with exemptions from several provisions of the Investment Company Act of 1940 ("Act") to the extent necessary to permit the use of sales loads payable on a deferred basis ("deferred sales loads"). The proposed rule would codify generally the standards that the Commission has developed in issuing exemptive orders concerning the use of contingent deferred sales loads on fund shares. The proposed rule would also expand these exemptions to permit the use of types of deferred sales loads not previously used. In addition, disclosure requirements for these other types of deferred sales loads are being proposed. The Commission is proposing the rule because deferred sales load arrangements would provide investors with alternatives to sales loads that are charged at the time fund shares are purchased. If adopted, the proposed rule could reduce significantly the need for mutual funds and related persons to obtain individual exemptions before imposing deferred sales loads.

The Commission is also considering whether to propose amendments to two existing rules, and to issue revised proposed amendments to another rule. These rules permit (or in the case of the proposed rule amendments, propose to permit), in relevant part, certain registered insurance company separate

accounts ("separate accounts") to charge deferred sales loads. Amendments are now being considered because the issues under review in the mutual fund deferred sales load area also apply to separate accounts. The Commission is requesting comment on insurance considerations relevant to the questions of whether and how amendments to these rules should be implemented.

DATE: Comments must be received on or before January 9, 1989.

ADDRESSES: Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments should refer to File No. S7–24–88. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian P. Kindelan, Special Counsel, (202) 272–2048, or Rochelle G. Kauffman, Attorney, (202) 272–2038, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is publishing for comment proposed rule 6c–10 under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Act"), and is also proposing certain related amendments to form N–1A [17 CFR 239.15A] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*]. Additionally, the Commission is asking for public comment on insurance considerations pertaining to whether, and, if so, how rules 6c–8 [17 CFR 270.6c–8], 6e–3(T) [17 CFR 270.6e–3(T)] and 6e–2 [17 CFR 270.6e–2] under the Act should be amended.

Executive Summary

Proposed rule 6c–10 would provide broad exemptions from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), 80a–22(c) and 80a–22(d), respectively] and rule 22c–1 under the Act [17 CFR 270.22c–1] to permit a registered open-end management investment company (other than a registered insurance company separate account) ("mutual fund" or "fund"),[1] its principal underwriter, dealers in the fund's shares, and persons authorized to consummate transactions in the fund's shares, to impose a deferred sales load, subject to specified conditions.[2] The deferred sales load could be deducted either upon redemption or in installments over time.[3] Proposed rule 6c–10 is intended, therefore, to permit funds to provide investors the opportunity to pay distribution costs on a deferred basis. The proposal should be read together with the recently proposed amendments to rule 12b–1 [17 CFR 270.12b–1] under the Act.[4] The conditions in the proposal, which are based on conditions developed in the context of a series of exemptive orders issued by the Commission, are designed to (i) provide investors with alternatives to sales loads that are paid at the time of purchase, and (ii) permit funds to charge and administer deferred sales loads in a manner substantially comparable to front-end sales loads.

Many of the exemptive orders issued by the Commission permit the use of deferred sales loads on shares of existing funds and other funds that might be created subsequent to the orders, the shares of which would be distributed by the same or related underwriters on substantially the same basis. Proposed rule 6c–10 would be prospective in effect to the extent that any fund inexistence at the time rule 6c–10 is adopted that charges a deferred sales load in reliance on a Commission order would be able to continue to rely on that order after adoption of the rule. However, any fund organized subsequent to the adoption of the rule that wishes to impose a deferred sales load would be required to comply with the provisions of the rule and would not be permitted to rely on a prior Commission order. Compliance with the rule also would be required of any existing fund that, after the adoption of the rule, wishes to impose a deferred sales load. Comment is requested as to whether *all* funds that charge deferred sales loads in reliance on prior orders should be required to comply with the provisions of rule 6c–10, when adopted.

The Commission also is considering whether to propose amendments to rules 6c–8 and 6e–3(T), and issue revised proposed amendments to rule 6e–2 under the Act. Rule 6c–8 permits the imposition of a deferred sale load on variably annuity contracts issued by separate accounts. Rule 6e–3(T), in pertinent part, provides exemptions to permit separate accounts to impose a deferred sales load on flexible premium variable life insurance contracts ("flexible premium contracts"). Similarly, the proposed amendments to rule 6e–2 would, in part, permit the imposition of a deferred sales load by separate accounts offering scheduled premium variable life insurance contracts ("scheduled premium contracts").[5] The Commission is requesting comment on insurance considerations relevant to proposing amendments to these rules to conform the rules to proposed rule 6c–10.

Background

Mutual funds engaged in a continuous public offering of redeemable securities. Until fairly recently, most of the sales and promotional expenses associated with this offering were passed on to fund investors in the form of a sales charge or "sales load" paid by the investor at the time fund shares were purchased and expressed as a percentage of the public offering price of the shares.[6] Funds that sold their shares to the public without a sales load formerly represented only a small portion of the industry.[7] However, the

[1] Paragraph (c)(1) of the proposed rule would provide that, for purposes of this rule, a registered open-end management investment company includes a separate series of such a company. *See infra* notes 59–60 and accompanying text.

[2] While the following discussion refers generally to the imposition of deferred sales loads by mutual funds, the proposed rule would provide exemptions to funds, their principal underwriters, dealers in fund shares, and persons authorized to consummate transactions in fund shares. Such exemptions are necessary because sections 22(c) and 22(d) of the Act, and rule 22c–1 thereunder, apply to all such parties. In addition, any of these parties may actually administer the deferred sales load.

[3] Paragraph (c)(3) of the proposed rule defines the term "deferred sales load" to mean any amount properly chargeable to sales or promotional expenses that is or may be deducted directly from a shareholder's account in one or more installments during the term of the investment, or upon the redemption of fund shares, or both. Accordingly, proposed rule 6c–10 would not provide exemptions for the deduction of an amount designated as a deferred sales load where the facts and circumstances indicate that the payment is not intended to cover sales or promotional expenses, but is intended to achieve some other purpose, such as to deter or restrict redemptions.

[4] Rule 12b–1 permits mutual funds to use a portion of fund assets to finance the distribution of fund shares, provided that certain procedural and substantive conditions are satisfied. The Commission proposed amendments to rule 12b–1 in Investment Company Act Rel. No. 16431 (June 13, 1988) [53 FR 23258, June 21, 1988] ("Release 16431").

[5] *See* Investment Company Act Rel. No. 14421 (Mar. 15, 1985) [50 FR 11709, Mar. 25, 1985] (proposed amendments to rule 6e–2).

[6] *See generally Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth*, H.R. Rep. No. 2337, 89th Cong., 2d Sess., 51–56, 201–209 (1966) (hereinafter "Public Policy Implications"). Where the proceeds of sales loads were insufficient to cover all distribution expenses, the excess was borne by the fund's investment adviser, either directly or through the operation of an affiliated underwriter. *Id.* at 209.

[7] *See id.* at 204 n. 7.

number and asset size of so-called "no-load" funds increased dramatically in the 1970's.[8] This increased competition from no-load funds and a perceived resistance among mutual fund investors to products that charge front-end sales loads have prompted load funds to develop alternative methods of distribution financing, such as the imposition of sales loads payable other than at the time of purchase.

The practice of imposing deferred sales loads originated with separate accounts. In 1979, one such account was granted exemptions from several provisions of the Act to permit the imposition of a "contingent deferred sales load" ("CDSL") [9] on variable annuity contracts issued by that account.[10] The CDSLs were to be paid when all or part of a shareholder's interest in the separate account was either redeemed from the account or converted to an annuity. Exemptions were sought because the provisions of the Act do not specifically address situations where investment companies, whether separate accounts or mutual funds, charge sales loads payable other than at the time of purchase.[11] Subsequent to the 1979 order, the Commission received numerous similar requests for exemptions from separate accounts seeking to impose CDSLs on variable annuity contracts.[12] The Commission codified those exemptions in 1983 when it adopted rule 6c–8 under the Act.[13] Following that, the Commission adopted rule 6e–3(T) for flexible premium contracts and proposed amendments to rule 6e–2 for scheduled premium contracts, broad exemptive rules which include provisions that permit (or in the case of rule 6e–2, proposed to permit) a separate account to deduct a sales load upon redemption, as well as in installments from a contractowner's account.[14]

At the time rule 6c–8 was proposed, the Commission had received, and granted, only one application from a mutual fund that sought to charge a deferred sales load.[15] In the release proposing rule 6c–8, the Commission specifically requested comment on whether, and under what conditions, the proposed rule should be expanded to provide exemptions to mutual funds that wish to charge deferred sales loads on their shares. No comments on this subject were received, and the Commission decided to adopt rule 6c–8 essentially as proposed and to consider later whether to provide similar exemptions to mutual funds.

Following the adoption of rule 6c–8, the Division of Investment Management ("Division") began to receive applications for exemptions from mutual funds and certain related persons ("Applicants" to permit deduction of deferred sales loads upon redemption of funds shares, and to date has received more than 60 applications.[16] In each application, Applicants sought to impose a CDSL. As noted above,[17] a CDSL is a deferred sales load that is paid, if at all, at the time fund shares are redeemed. The amount of the CDSL decreases to zero if redemption does not occur before a specified period of time. For instance, a typical CDSL might impose a five percent charge on the redemption of shares made within one year of purchase. In each successive year, the percentage of the sales load would be reduced by one percent, with the result that a redemption of shares that had been held for more than five years would not be subject to any sales load.[18]

The majority of Applicants have been funds and related persons that use a combination of a CDSL and a distribution plan, adopted in accordance with rule 12b–1 under the Act (commondy, and herein, referred to as a "12b–1 plan"), as a substitute for charging investors a front-end sales load.[19] Typically, a fund's principal

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[8] No load funds generally are distributed directly to the investing public by the fund organization, without the intervention of a retail network of broker-dealers. The lower distribution costs that result from this arrangement were traditionally paid by the fund's investment adviser or principal underwriter out of its own resources. In recent years, many of such funds have paid for distribution out of fund assets by adopting distribution plans under rule 12b–1. Other directly distributed funds have imposed relatively modest front-end sales loads on their shares and have become known as "low-load" funds.

[9] As discussed in more detail below, a CDSL is a deferred sales load that is paid, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the fund. *See infra* text accompanying notes 17–23.

[10] *See* Nationwide Life Insurance Company and MFS Variable Account, Investment Company Act Rel. Nos. 10557 (Jan. 15, 1979) [44 Fr 4067, Jan. 19, 1979] (notice of application and 10590 (Feb. 12, 1979) (order) ("Nationwide").

[11] Specifically, exemptions were sought from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act, and from rule 22c–1 under the Act. Mutual funds and related persons that desire to charge a sales load payable other than at the time of purchase must first obtain exemptions from sections 2(a)(32), 2(a)(35), and 22(c) of the Act, and rule 22c–1 under the Act. For more discussion of why it is necessary for mutual funds to obtain exemptions from these sections, *see infra* notes 24–29 and accompanying text.

[12] *See, e.g.*, American Variable Annuity Life Assurance Co., *et al.*, Investment Company Act Rel. Nos., 11025 (Jan. 18, 1980) [45 FR 6522, Jan. 28, 1980] (notice of application) and 11045 (Feb. 12, 1980) (order); Nationwide Life Ins. Co. and Nationwide DC Variable Account, Investment Company Act Rel. Nos. 11180 (May 22, 1980) [45 FR 36251, May 29, 1980] (notice of application) and 11218 (June 17, 1980) (order).

[13] Rule 6c–8 under the Act was proposed in Investment Company Act Rel. No. 13048 (Feb. 28, 1983) [48 FR 9532, Mar. 7, 1983] ("Release 13048") and adopted in Investment Company Act Rel. No. 13406 (July 28, 1983) [48 FR 36097, Aug. 9, 1983]. The imposition of deferred sales loads on variable annuity contracts by separate accounts is discussed more fully in Release 13048.

[14] The imposition of deferred sales loads on flexible premium contracts is discussed in Investment Company Act Rel. No. 14234 (Nov. 14, 1984) [48 FR 47208, Dec. 3, 1984] (adopting rule 6e–3(T)) and Investment Company Act Rel. No. 15651 (Mar. 30, 1987) [52 FR 11187, Apr. 8, 1987] (adopting amendments to rule 6e–3(T)). The imposition of deferred sales loads on scheduled premium contracts is discussed in Investment Company Act Rel. No. 14421 (Mar. 15, 1985) [50 FR 11709, Mar. 25, 1985] (proposing rule amendments to rule 6e–2).

[15] *See* E.F. Hutton Investment Series, Inc., Investment Company Act Rel. Nos. 12079 (Dec. 4, 1981) [46 FR 60703, Dec. 11, 1981] (notice of application) and 12135 (Jan. 4, 1982) (order).

[16] *See, e.g.*, Drexel Burnham Fund and DBL Tax-Free Fund, Inc., Investment Company Act Release Nos. 16201 (Jan. 22, 1988) [53 FR 2664, Jan. 29, 1988] (notice of application) and 16284 (Feb. 24, 1988) (order); Keystone America Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 19878) (order); FPA Paramount Fund, Inc., Investment Company Act Rel. Nos. 14769 (Oct. 25, 1985) [50 FR 45520, Oct. 31, 1985] (notice of application) and 14803 (Nov. 19, 1985) (order).

[17] *See supra* note 9.

[18] Although much of the discussion below focuses on CDSLs, the proposed rule, if adopted, also would provide exemptions to permit the imposition of non-contingent deferred sales loads.

[19] *See, e.g.*, Eaton Vance California Municipals Trust, Investment Company Act Rel. Nos. 15829 (June 26, 1987) [52 FR 25105, July 2, 1987] (notice of application) and 15893 (July 24, 1987) (order); GNA Investors Trust, Investment Company Act Rel. Nos. 15619 (Mar. 11, 1987) [52 FR 8686, Mar. 19, 1987] (notice of application) and 15672 (Apr. 9, 1987) (order); PaineWebber Investment Series and Master Series, as amended, Investment Company Act Rel. Nos. 15579 [52 FR 5608, Feb. 25, 1987] (notice of application) and 15618 (Mar. 11, 1987) (order).

Although most Applicants do not charge a front-end sales load, the Commission has received several applications from funds and related persons that sought to impose both a front-end sales load and a CDSL on the same shares. *See, e.g.*, Keystone America Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 1987) (order); International Heritage Fund and International Heritage Securities, Inc., Investment Company Act Rel. Nos. 15597 (Mar. 2, 1987) [52 FR 7354, Mar. 10, 1987] (notice of application) and 15648 (Mar. 27, 1987) (order); Continental U.S. Government Plus Fund Trust, Investment Company Act Rel. Nos. 14973 (Mar. 7, 1986) [FR 8725, Mar. 13, 1986] (notice of application) and 15029 (Apr. 2, 1986) (order). In addition, some Applicants impose a front-end sales load, but waive that load for certain specified investors. These investors, however, will be subject to a CDSL if their shares are redeemed within a certain period of time after purchase. Of these Applicants, some stated that they have a 12b–1 plan and some did not. *See, e.g.*, Drexel Burnham Fund and DBL Tax-Free Fund, Inc., Investment Company Act Rel. Nos.16201 (Jan. 22, 1988) [53 FR 2664, Jan. 29, 1988] (notice of application) and 16284 (Feb. 24, 1988) (order) (12b–1 plan); FPA Paramount Fund, Inc., Investment Company Act Rel. Nos. 14769 (Oct. 25, 1985) [50 FR 45520, Oct. 31, 1985] (notice of

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underwriter initially pays the sales and promotional expenses associated with the sale of fund shares, including any sales commissions paid to persons that sell the shares. The principal underwriter then recovers the amounts expended through payments under the fund's 12b–1 plan.[20] However, because 12b–1 plans provide that annual payments for distribution may not exceed a specified percentage of the fund's average net assets, or some similar ceiling, it may be several years before the principal underwriter can recover fully the amounts expended on the fund's behalf. According to Applicants, this delay in payment raises the possibility that a shareholder will redeem fund shares before the payments under the funds's 12b–1 plan have reimbursed fully the principal underwriter for expenses incurred in connection with the sale of those shares. Thus, Applicants have sought to impose on each redeeming shareholder a CDSL designed to approximate the amount of unreimbursed expenses.[21]

Applicants generally have represented that no CDSL will be imposed upon the redemption of shares purchased through the reinvestment of dividends or capital gains distributions.[22] In addition, in calculating the amount of a CDSL due upon redemption, shares not subject to any CDSL generally will be redeemed first.[23] After all such shares have been redeemed, the remaining shares will be redeemed in the order purchased.

Applicants routinely have sought exemptions from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act, and from rule 22c–1 under the Act, to the extent necessary to permit a CDSL.[24] Following is a discussion of why exemptions from those sections are necessary and a summary of the arguments typically made by Applicants.

Section 2(a)(32) of the Act defines the term "redeemable security" to be a security that, upon its presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent of those assets. Because the imposition of a CDSL would cause a redeeming shareholder to receive an amount less than net asset value of redeemed shares, Applicants have requested an exemption from section 2(a)(32) to the extent necessary to have shares subject to a CDSL be considered "redeemable securities" for purposes of the Act.[25] In support of their position, Applicants have maintained that, although the imposition of a CDSL, in effect, could cause the shareholder to receive an amount less than the net asset value of his redeemed shares, payment of a CDSL does not prevent a redeeming shareholder from receiving his proportionate share of the fund's current net asset value. Rather, Applicants have argued that payment of a CDSL constitutes only the payment of the same sales load that could have been charged when the shares were purchased.

Section 2(a)(35) defines the term "sales load" to be an amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased.[26] Because CDSLs are not charged at the time of purchase, Applicants routinely have requested an exemption from section 2(a)(35). Applicants have maintained that a CDSL, in essence, is a sales load because a CDSL is used to pay expenses relating to sales and promotional activities, and that the basic nature of a CDSL as a sales charge is not changed by the fact that payment is deferred and made contingent upon the occurrence of a certain event.

Section 22(c) of the Act and rule 22c–1 thereunder require that the price of a redeemable security issued by a fund, for purposes of sale, redemption and repurchase, be based on the fund's current net asset value. Because a CDSL would cause a redeeming shareholder to receive an amount less than the net asset value of the redeemed shares, Applicants have sought an exemption from this section and rule, arguing that the redemption price of shares subject to a CDSL is based on current net asset value, and that a CDSL imposed at the time shares are redeemed simply is deducted from the redemption price in arriving at the net proceeds payable to the shareholder.

Section 22(d) of the Act requires a mutual fund, its principal underwriter, and any dealer in redeemable securities issued by a fund to sell securities only at a current public offering price described in the fund's prospectus. Because sales loads (*i.e.*, front-end sales loads) have traditionally been a component of the public offering price, section 22(d) has required historically that all investors be

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application) and 14803 (Nov. 19,1985) (order) (no 12b–1 plan); EuroPacific Growth Fund, Investment Company Act Rel. Nos. 14161 (Sept. 17, 1984) [49 FR 37492, Sept. 24, 1984] (notice of application) and 14195 (Oct. 15, 1984) (order) (12b–1 plan).

[20] These types of 12b–1 plans are known typically as "reimbursement plans."

[21] The CDSL percentage that would be payable for shares redeemed in the first year is calculated to cover fully the distribution expenses incurred in connection with the sale of those shares. The rate at which the CDSL decreases in subsequent years generally reflects the rate at which the underwriter recovers the amounts disbursed through payments under the fund's 12b–1 plan.

[22] *But see* E.F. Hutton Investment Series, Inc., Investment Company Act Rel. Nos. 12079 (Dec. 4, 1981) [46 FR 60703, Dec. 11, 1981] (notice of application) and 12135 (Jan. 4, 1982) (order), which permits the Applicant, in some situations, to impose a CDSL on shares purchased through the reinvestment of dividends and capital gains distributions. This order was subsequently amended to prohibit the imposition of a deferred sales load on such shares. *See* Investment Company Act Rel. Nos. 16426 (June 8, 1988) [53 FR 22255, June 14, 1988] (notice of application) and 16464 (July 1, 1988) (order).

Similarly, Applicants generally have stipulated that a CDSL will not be charged against the portion of a shareholder's account that is attributable to capital appreciation. One order does permit a two percent CDSL to be charged against a shareholder's account, including the portion that is attributable to capital appreciation. However, this order was contingent on the Applicant's representation that no shareholder will pay a charge in any one year (inclusive of initial sales charges, redemption charges, distribution charges, and CDCLs) that is greater than 8.5 percent of the share's purchase price. *See* Baron Asset Fund and Baron Capital, Inc., Investment Company Act Rel. Nos. 15898 (July 28, 1987) [52 FR 28889, Aug. 4, 1987] (notice of application) and 16039 (Oct. 7, 1987) (order).

[23] For purposes of calculating the CDSL, if any, due upon redemption, some Applicants track specific fund shares purchased and redeemed, others track dollar amounts invested and withdrawn, while others use a combination of the two methods. The rule text reflects these alternative formulations. *See infra* text accompanying note 55.

Among the shares that most Applicants redeem first are share equal in value to the excess of the current value of shares in the account over total purchase payments made by the shareholder. *See, e.g.*, Criterion Special Series, Investment Company Act Rel. Nos. 16009 (Sept. 28, 1987) [52 FR 37234, Oct. 5, 1987] (notice of application) and 16072 (Oct. 23, 1987) (order); GNA Investors Trust, Investment Company Act Rel. Nos. 15619 (Mar. 11, 1987) [52 FR 8686, Mar. 19, 1987] (notice of application) and 15672 (Apr. 9, 1987) (order).

[24] *See, e.g.*, Tucker Anthony Mutual Fund, as amended, Investment Company Act Rel. Nos. 15708 (Apr. 28, 1987) [52 FR 16474, May 5, 1987] (notice of application) and 15745 (May 19, 1987) (order); Keystone America Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 1987) (order.

[25] One consequence of a determination that a security subject to a CDSL is not a "redeemable security" under section 2(a)(32) is that the fund issuing the security could not meet the definition of an "open-end company" contained in section 5(a)(1) of the Act [15 U.S.C. 80a–5(a)(1)]. Section 5(a)(1) defines an "open-end company" as a "management company which is offering for sale or has outstanding any redeemable security of which it is the issuer."

[26] Section 2(a)(35) of the Act defines "sales load" as [t]he difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, "sales load" includes the sales load on any investment company securities in which the payments made on such certificates are invested, as well as the sales load on the certificate itself.

charged the same load.[27] Funds seeking to charge different amounts of sales loads to different classes of investors or for different classes of transactions were, therefore, required to seek an exemption from section 22(d). These applications were codified in rule 22d–1 under the Act [17 CFR 270.22d–1].[28]

By its terms, rule 22d–1 applies to the sale of redeemable securities "at prices that reflect scheduled variations in, or elimination of, the sales load." Because this language contemplates sales loads paid at the time of purchase, the exemption provided by rule 22d–1 does not extend to scheduled variations in deferred sales loads. Therefore, Applicants seeking to offer scheduled variations in, or elimination of, CDSLs to specified classes of investors, or in connection with specified classes of transactions, have requested exemptions from section 22(d).[29] In seeking these exemptions, Applicants have represented that either the scheduled variations would be imposed subject to the conditions set forth in rule 22d–1 under the Act for scheduled variations in front-end sales loads, or the scheduled variations would satisfy equivalent conditions set forth in the particular application.

The Commission granted the CDSL exemptions under section 6(c) of the Act [15 U.S.C. 80a–6(c)].[30] Those exemptions were based on several representations. Applicants represented that a CDSL would be more advantageous to shareholders than a front-end sales load because shareholders would have a greater amount of money available for investment at the time of purchase. Applicants also represented that shareholders would not be charged any greater amount as a CDSL than they could have been charged as a front-end sales load.[31] Other representations related to the administration and calculation of CDSLs.[32]

Discussion

A. Proposed Rule 6c–10

Proposed rule 6c–10 would provide exemptions to permit the use of a deferred sales load, including a CDSL, provided that certain conditions are met. The proposal would obviate the need for funds to obtain individual exemptive orders prior to charging CDSLs. The proposed rule would also permit a fund to use other types of deferred sales loads, such as a sales load deducted in one or more installments over time. Any combination of front-end and contingent or non-contingent deferred sales loads would be permissible.

The proposed rule is intended to provide greater flexibility to mutual funds in their distribution arrangements. In this regard, the proposal should be read together with the recently proposed amendments to rule 12b–1 under the Act;[33] the proposal seeks to afford shareholders the alternative of deferring payments for distribution without the use of 12b–1 plans.

The availability of proposed rule 6c–10 would be subject to specific conditions. These conditions would: (i) Require funds to calculate the amount of a deferred sales load payable upon redemption as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption; (ii) prohibit funds from charging a deferred sales load, or combination of deferred sales load and front-end sales load, that exceeds the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD Rules"); (iii) prohibit funds from charging any amount to shareholders or to the fund that represents interest, or any similar or related charge, on the unpaid balance of a deferred sales load; (iv) prohibit funds from charging a deferred sales load on any amount that represents an increase in the value of fund shares due to capital appreciation; (v) prohibit funds from imposing a deferred sales load on shares, or amounts representing shares, purchased through the reinvestment of dividends or capital gains distributions; (vi) require funds that impose a deferred sales load, all or part of which is payable at the time of redemption, to calculate the amount of the load by considering all shares, or amounts respresenting shares, that are not subject to any deferred sales load to be redeemed first, with all other shares to be considered redeemed in the order purchased, unless a different order is used that would result in a lower deferred sales load; and (vii) permit funds to offer scheduled variations in, or elimination of, deferred sales loads for particular classes of shareholders or transactions, subject to the substantive conditions applicable to front-end sales loads under rule 22d–1. In addition, the proposed rule would prohibit funds that charge deferred sales loads from holding themselves out or being held out as "no-load" funds or being promoted in a manner that is likely to convey to investors the impression that no charges for sales or

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[27] *See* Investment Company Act Rel. No. 13183 (Apr. 22, 1983) [48 FR 1987, May 3, 1983], in which the Commission proposed rule 22d–6 (later renumbered rule 22d–1) under the Act. *See also* Public Policy Implications, *supra* note 6, at 221.

[28] Rule 22d–1 was adopted in Investment Company Act Rel. No. 14390 (Feb. 22, 1985) [50 FR 7909, Feb. 27, 1985]. Rule 22d–1 provides that the issuer, principal underwriter, or dealer in redeemable securities may sell those securities at prices that reflect scheduled variations in, or elimination of, the sales load for particular classes of shareholders or transactions, provided that (1) the scheduled variation is applied uniformly to all offerees in the class specified; (2) the fund furnishes to existing shareholders and prospective investors adequate information concerning any scheduled variation as prescrdibed in applicable registration statement form requirements; (3) the fund revises its prospectus and statement of additional information to describe any new variation prior to making the variation available to purchasers; and (4) the fund informs existing shareholders of the new variation within one year of the date the variation is first made available to purchasers of the fund's shares.

[29] For example, many Applicants stated that the CDSL would be waived if the shares were redeemed under such circumstances as (1) the death or disability of the shareholder; (2) certain distributions from Individual Retirement Accounts (IRAs) or other qualified retirement plans; (3) involuntary redemptions of accounts; or (4) redemptions effected by employees, and spouses and minor children of those employees of the fund, investment adviser, or underwriter. *See, e.g.*, Shearson Lehman Asset Allocation Fund, Investment Company Act Rel. Nos. 15530 (Jan. 12, 1987) [52 FR 2169, Jan. 20, 1987] (notice of application) and 15566 (Feb. 4, 1987) (order); Keystone America Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 1987) (order); Paine Webber Investment Series and Master Series, as amended, Investment Company Act Rel. Nos. 15579 (Feb. 13, 1987) [52 FR 5608, Feb. 25, 1987] (notice of application) and 15618 (Mar. 11, 1987) (order). In addition, some Applicants have requested exemptions to permit a CDSL to be reduced or waived for redemptions by shareholders who had purchased fund shares of a specified value. *See, e.g.*, Mackay-Shields Mainstay Series Fund, as amended, Investment Company Act Rel. Nos. 15718 (May 5, 1987) [52 FR 17654, May 11, 1987] (notice of application) and 15758 (May 29, 1987) (order); Tucker Anthony Mutual Funds, as amended, Investment Company Act Rel. Nos. 15703 (Apr. 28, 1987) [52 FR 16474, May 5, 1987] (notice of application) and 15745 (May 19, 1987) (order).

[30] Section 6(c) authorizes the Commission to grant an exemption from the Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes farily intended by the policy and provisions of [the Act]."

[31] While some Applicants specifically made this representation, others were silent on the question. However, none of the exemptive orders issued by the Commission permit the imposition of a CDSL that could exceed the maximum front-end sales load permitted under Article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD Rules").

[32] *See supra* notes 22–23 and accompanying text.

[33] *See* Release 16431, *supra* note 4, at n.84. In Release 16431, the Commission noted that proposed rule 6c–10 would be forthcoming. *Id.*

promotional expenses are imposed on fund shares.

The conditions are intended to: (i) Reduce investor confusion concerning the amount of deferred sales loads that could be charged and the schedule of any installment payments to be made, (ii) provide shareholders the alternative of deferring sales load payments while minimizing the prospect of these payments being imposed to impede the redemption of fund shares,[34] and (iii) provide that deferred sales loads be imposed and administered in a manner substantially comparable to front-end sales loads. Most of the conditions are based on those developed by the Commission in issuing exemptive orders on individual applications for CDSLs.

1. Scope of the Rule

Paragraph (c)(3) of the proposed rule defines the term "deferred sales load" to mean "any amount properly chargeable to sales or promotional expenses that is or may be deducted directly from a shareholder's account in one or more installments during the term of the investment, or upon redemption, or both."[35] Under that definition, a fund could impose a sales load that is payable by the shareholder while the shares are being held, or upon redemption of the shares, or both. For example, the proposed rule would permit a fund to offer shareholders the option of paying a deferred sales load in installments payable out of the shareholder's account at specified intervals. If the shareholder redeemed before the load was fully paid, the balance could be deducted from the redemption proceeds.[36]

By providing an exemption to permit deferred sales loads, regardless of whether the deferred sales load is subject to any contingency, proposed rule 6c–10 would facilitate providing investors with alternatives to sales loads that are charged at the times fund shares are purchased. In addition, although no exemptive applications have been received from Applicants seeking to impose deferred sales loads other than CDSLs,[37] such arrangements raise few issues that have not been addressed in the context of CDSLs,[38] and there is no apparent reason to distinguish between CDSLs and other types of deferred sales loads.

2. Calculation of Deferred Sales Loads

In the majority of the CDSL exemptive applications, Applicants have, in effect, represented that, when a share subject to a CDSL is redeemed, the maximum CDSL payable on that share will be determined as a specified percentage of the share's net asset value at the time it was purchased. By calculating the CDSL as a percentage of net asset value at the time of purchase, rather than as a percentage of net asset value at the time of redemption, Applicants, in effect, permit investors to ignore the possibility of a higher sales load payment resulting from market appreciation.[39]

Subject to one exception, described below, this method of calculation would be incorporated into paragraph (a)(1)(i) of proposed rule 6c–10. In addition, paragraph (a)(1)(ii) would provide that if a fund imposes a deferred sales load payable in installments, each installment payment would have to be expressed either as specified dollar amount or calculated as a specified percentage of the net asset value at the time of purchase. These requirements are intended to enable shareholders both to (i) calculate readily, at the time of investment, the total deferred sales loads that could be charged and (ii) compare deferred sales loads charged by competing funds.[40]

Although the maximum CDSLs payable under the exemptive orders are calculated generally as a specified percentage of the net asset value of the shares at the time they were purchased, many Applicants stipulated that a lower CDSL would be imposed on redeemed shares whose net asset value had declined since they were purchased. This reduction in CDSL was accomplished by applying the same specified percentage to the reduced net asset value, rather than to the original, higher, net asset value at the time of purchase.[41] Proposed paragraph 6c–10(a)(1)(i) would essentially codify these orders and also require this practice for other deferred sales loads payable upon redemption.

Specifically, paragraph (a)(1)(i) of the proposed rule would require any fund that imposes a deferred sales load payable upon redemption to calculate the deferred sales load as being the lesser of the (i) amount that represents a stated percentage of the net asset value of the shares at the time of purchase, or (ii) the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption. All other provisions of rule 6c–10 would also have to be satisfied. Thus, for example, funds would remain subject to paragraph (a)(4) of the proposed rule, which would prohibit the imposition of a deferred sales load on any amount which represents capital appreciation.[42]

Funds that charge deferred sales loads payable upon redemption would be required to use this method of calculation so that, in a falling market, an investor would not pay a deferred

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[34] While there may be benefits to deferring sales load payments, it should be noted that where a fund imposes a 12b–1 fee together with a deferred sales load, the benefits of deferral are diminished, particularly if the fund must pay interest on amounts advanced by the principal underwriter in anticipation of reimbursement. *See* Release 16431, *supra* note 4, at n.90 and accompanying text.

[35] Since a CDSL is a type of deferred sales load, all references in the proposed rule to deferred sales loads include CDSLs. Paragraph (c)(4) of the proposed rule defines a CDSL to be "a deferred sales load that is paid, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the company."

[36] Regardless of how the deferred sales load is to be paid, the maximum amount of the deferred sales load that could be imposed and the schedule of any installment payments would have to be disclosed properly in the fund's prospectus. *See infra* notes 61–66 and accompanying text.

[37] While no exemptive applications have been received from Applicants seeking to impose deferred sales loads other than CDSLs, the Division has received a number of informal inquiries on the subject. The subject has also been raised in an article on a related topic. *See* Gardiner, *Mutual Fund Financing of Share Distribution Expenses*, 20 Review of Securities and Commodities Regulation 77, 83 (May 13, 1987) ("Gardiner").

[38] The Commission also has had extensive experience in reviewing a variety of deferred sales load arrangements in the context of separate accounts. *See supra* notes 9–14 and accompanying text.

[39] For example, a 5 percent maximum CDSL on a share whose net asset value at the time of purchase was $100, but at the time of redemption had risen to $150, would be $5, not $7.50.

Applicants have used different terminology to express this method of calculation. For instance, most Applicants represented that the maximum amount of the CDSL would be calculated as a percentage of the "purchase price" of the redeemed securities. Since in the context of a deferred sales load, the entire amount paid is invested, the term "purchase price" is simply another way to express the net asset value of the redeemed shares at the time of purchase.

[40] By requiring that deferred sales loads be calculated as a percentage of the net asset value at the time of purchase, the proposed rule also is intended to make it easier for shareholders to compare funds that charge a deferred sales load with funds that charge a combination of a front-end sales load and deferred sales load. Form N–1A requires front-end sales loads to be calculated as a percentage of the net amount invested, as well as a percentage of the public offering price.

[41] *See, e.g.*, Keystone American Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 1987) (order); MetLife-State Street Equity Trust, Investment Company Act Rel. Nos. 15072 (Apr. 24, 1986) [51 FR 16244, May 1, 1986] (notice of application) and 15107 (May 19, 1986) (order).

[42] The rule would not permit, for example, a deferred sales load to be set at 2 percent of the net asset value of the shares at the time of redemption, subject to a cap of 7 percent of the value of the shares at the time of purchase. To do so would permit a sales load on capital appreciation until the cap was reached, in contravention of paragraph (a)(4). For more discussion of the capital appreciation issue, *see infra* text following note 52.

sales load upon redemption that would be higher as a percentage of the investor's total account than would have been the case had the investor paid the load at the time of purchase. Without such a requirement, the proportionate increase in the impact of a sales load might impinge on an investor's freedom to redeem shares.[43] The Commission specifically requests comment as to whether this method of calculation should be permissive rather than mandatory.

Paragraph (a)(1)(ii) would permit, but not require, a fund that imposes a deferred sales load payable on an installment basis to calculate the deferred sales load as being the lesser of (i) the amount that represents a stated percentage of the net asset value of the shares at the time of purchase, or (ii) the amount that represents the same or a lower percentage of the net asset value of the shares at the time the installment is paid, provided again that all other provisions of rule 6c–10 are satisfied. The intent of this provision is to permit a fund that imposes a deferred sales load payable on an installment basis to impose a lower deferred sales load in a falling market. Unlike the comparable provision in proposed paragraph (a)(1)(i), however, proposed paragraph (a)(1)(ii) would be permissive. The Commission is not proposing to require this method of calculation because the concern that deferred sales loads would be imposed in such a manner as to impede the redemption of fund shares is not releveant to deferred sales load payable on an installment basis. The Commission is also concerned that possible investor confusion and difficulties relating to the computation of the sales load would outweigh the benefits that would otherwise exist by using this method of calculation. However, the Commission specifically requests comment on whether, in the context of installment payments, this method of calculation should be mandatory rather than permissive.

3. Reference to the NASD Rules of Fair Practice

Paragraph (a)(2) of proposed rule 6c–10 would limit exemptions to those funds whose maximum amount of all front-end and deferred sales loads do not exceed the maximum sales charge permissible as a front-end sales load under Article III, section 26(d) of the NASD Rules.[44] As stated earlier, none of the exemptive orders issued by the Commission permit the imposition of a CDSL that would exceed the maximum front-end sales load permitted under the NASD Rules. In addition, Applicants that sought to charge both a front-end sales load and a CDSL have stipulated that the aggregate of the front-end sales load and the maximum CDSL payable would not exceed the NASD limitations.[45] Accordingly, paragraph (a)(2) would codify this practice and apply it to the other types of deferred sales loads permissible under the proposed rule.

Article III, section 26(d) of the NASD Rules was adopted in 1975 under the authority granted to the NASD by section 22(b) of the Act [15 U.S.C. 80a–22(b)]. The authority was granted to the NASD as part of the 1970 amendments to the Act,[46] and reflects a Congressional judgment that sales loads on mutual fund shares should allow for both reasonable compensation for sales personnel, broker-dealers and underwriters, and reasonable sales loads to shareholders.[47] While section 22(b) and the NASD Rules speak in terms of sales loads or charges that are included in the public offering price of fund shares, it would be in accordance with the purpose of those provisions to prohibit funds relying on the proposed rule from charging deferred sales loads that, alone or in combination with front-end sales loads, would exceed the maximum charge permissible under the NASD Rules.[48]

As stated previously, the majority of Applicants have been funds that use a combination of a CDSL and a 12b–1 plan as a substitute for charging investors a front-end sales load.[49] Payments under 12b–1 plans are often used to pay sales commissions and other types of distribution costs traditionally covered by sales loads.[50] Accordingly, comment is requested on whether funds with 12b–1 plans should be prohibited from imposing a deferred sales load where the total of all front-end sales loads, deferred sales loads, and 12b–1 fees exceeds the NASD maximum, and whether any distinction should be drawn in such circumstances between non-contingent deferred sales loads and CDSLs.

4. Interest, Carrying and Finance Charges

Proposed paragraph 6c–10(a)(3) would prohibit a fund from imposing a deferred sales load if any charge is imposed on shareholders or the fund that is intended to be a payment of interest or similar charge on the amount of load deferred. Moreover, any penalty or fee charged upon early payment of a deferred sales load would be considered an interest charge and would, therefore, be prohibited by proposed paragraph (a)(3).

Like the exemptions previously granted under section 6(c) of the Act, proposed rule 6c–10 is premised on the recognition that deferred sales loads may be preferable to some investors in lieu of front-end sales loads because investors may have more money available for investment at the time of purchase. This possible benefit would be greatly diminished, if not eliminated, if funds were allowed to impose interest or similar charges on the amount of load deferred.[51] Nevertheless, the possibility exists that some investors may be willing to pay interest on the amount of sales load deferred if the interest rate charged is less than the expected rate of appreciation of the investment. Accordingly, the Commission requests comment on whether funds should be permitted to charge interest on the amount of the load deferred.[52]

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[43] *See supra* note 25 and accompanying text.

[44] Article III, section 26(d)(1) of the NASD Rules states that the "maximum sales charge on any transaction shall not exceed 8.5% of the offering price." The section also establishes lower maximum sales charges where fund investors are not given certain favorable treatement with respect to dividend reinvestment and quantity discounts on sales charges imposed on single and multiple share purchases.

[45] *See supra* note 31 and accompanying text.

[46] *See* Investment Company Amendments Act of 1970, Pub. L. No. 91–547, 84 Stat. 1413–1436 (1970).

[47] *See* section 22(b)(1) of the Act. *See also* H.R. Rep. No. 1631, 91st Cong., 2d Sess. 28 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 7–8 (1969).

[48] On a related matter, under the amendments to rule 12b–1 proposed in Release 16431, if adopted, the existence of a deferred sales load should be considered a surrounding circumstance when directors consider the NASD Rules in adopting or continuing a 12b–1 plan. *See* Release 16431, *supra* note 4, at nn.167–69 and accompanying text.

[49] *See supra* notes 19–21 and accompanying text.

[50] *See Release 16431, supra* note 4, at text following n.122. The Commission has recently proposed that the term "asset-based sales load" be used to refer to payments made under 12b–1 plans. *See id.* at n.194 and accompanying text.

[51] While none of the Applicants impose interest or similar charges on shareholders for the amount of sales loads deferred under a CDSL, many funds that charge 12b–1 fees and CDSLs do pay interest on amounts advanced by the principal underwriter in anticipation of reimbursement. *See supra* note 34.

[52] At least one commentator has raised the issue of whether the use of deferred sales load arrangements should be considered an extension of credit on mutual fund shares that would be prohibited under section 11(d)(1) of the Securities Exchange Act of 1934 [15 U.S.C. 78k(d)(1)]. *See* Gardiner, *supra* note 37, at 83. Neither the Commission nor its staff has formally addressed this issue in the past. Nevertheless, the Commission is aware that, while such arrangements may be viewed as involving an extension of credit whether or not there is an explicit interest charge, the staff of the Division of Market Regulation has informally indicated that it would not regard the use of deferred sales charges on mutual funds as prohibited by section 11(d)(1).

5. Capital Appreciation of Fund Shares

Paragraph (a)(4) of the proposed rule would prohibit a fund from imposing a deferred sales load on any amount that represents an increase in the value of fund shares due to capital appreciation. Virtually all Applicants have represented that no CDSL will be imposed on such amounts. A sales load on capital appreciation would essentially constitute a performance-based sales load. Such a sales load would also be inconsistent with the argument that deferral of a sales load is mainly a matter of timing and does not affect the amount or nature of the charge. Thus, paragraph (a)(4) would codify a condition of prior exemptive orders, and would apply the restriction to other types of deferred sales loads permissible under the rule.

6. Reinvested Dividends and Capital Gains Distributions

Paragraph (a)(5) of the proposed rule would prohibit the imposition of a deferred sales load on shares purchased through the reinvestment of dividends or captial gains distributions. Applicants for exemptions generally have represented that no CDSL will be imposed on such shares.[53] Paragraph (a)(5) would, therefore, codify this condition of prior exemptive orders, and apply it to the other types of deferred sales loads permissible under the proposed rule.

Although virtually no fund presently charges a CDSL on shares acquired through the reinvestment of dividends, some funds do impose a front-end sales load on such shares. Accordingly, comment is requested on whether a fund should be permitted to impose a deferred sales load on shares purchased through dividend reinvestment.

7. Order of Redemption

Paragraph (a)(6) of the proposed rule would require a fund that imposes a deferred sales load, all or part of which is paid at the time of redemption, to calculate the amount of the load by considering all shares, or amounts representing shares, that are not subject to any deferred sales load to be redeemed first. Thus, the first shares or amounts to be redeemed would be those attributable to capital appreciation, the reinvestment of dividends and capital gains distributions, or to a scheduled variation in the load. Other shares or amounts would then be considered to be redeemed in the order purchased, unless the fund chose to redeem in another order that would result in a lower sales load. Proposed paragraph (a)(6), which is modeled on representations made in a majority of CDSL exemptive applications,[54] is intended to require redemptions in an order that (i) allows investors to receive the maximum benefit from shares not subject to any deferred sales load, (ii) is easily disclosed to and understood by shareholders, and (iii) is compatible with existing bookkeepng systems developed for funds that charge CDSLs.[55]

Given the high degree of control that a fund's investment adviser or principal underwriter may have over the order of redemption, and the fact that the underwriter would benefit from an order that results in the payment of a higher sales load or in the earlier payment of a load, the inclusion of a specific provision in the proposed rule would appear necessary. Paragraph (a)(6) of the proposed rule would, however, permit a different order if the alternative order would result in the redeeming shareholder paying a lower deferred sales load than would be payable under the order specified in the rule.

8. Scheduled Variations

Paragraph (a)(7) of proposed rule 6c–10 would permit a fund to offer a scheduled variation in, or the elimination of, a deferred sales load to classes of shareholders or in connection with classes of transactions specified by the fund, as long as the fund complies with the substantive provisions of rule 22d–1 under the Act.[56] Proposed paragraph (a)(7), therefore, would require a fund that offers a scheduled variation to (i) apply the scheduled variation uniformly to all offerees in the specified class; (ii) furnish to existing and prospective shareholders adequate information concerning the scheduled variation as prescribed in applicable registration statement form requirements; (iii) revise its prospectus and statement of additional information to describe the new variation prior to making the sales load variation available to purchasers of fund shares; and (iv) advise existing fund shareholders of any new scheduled variation within one year of the date such variation is first made available to purchasers of fund shares.

As discussed previously, the Commission has received a large number of requests for exemption from section 22(d) from Applicants that wish to offer the sale of securities subject to scheduled variations in or the elimination of a CDSL.[57] The Commission has granted such exemptions based generally on representations that scheduled variations would be imposed either in compliance with the provisions of rule 22d–1 or equivalent conditions. Paragraph (a)(7) would codify the conditions of prior orders and apply the conditions to other types of deferred sales loads permissible under the rule. By requiring compliance with the substantive provisions of rule 22d–1, the proposed rule would provide that scheduled variations in deferred sales loads would be subject to the same restrictions applicable to front-end sales loads.

Paragraph (a)(7) of the proposed rule also would permit a fund to offer an existing shareholder any new scheduled variation that would waive or reduce the amount of a deferred sales load that had not yet been paid by the shareholder. Rule 22d–1(c), which would be among the substantive requirements incorporated by reference into proposed paragraph (a)(7), requires a fund to amend its prospectus and statement of additional information *before* making any new scheduled variation in a front-end sales load available to purchasers of fund shares. However, a literal application of rule 22d–1(c) to deferred sales loads arguably could prevent a fund from offering the benefit of a new scheduled variation to a shareholder who had already purchased his shares, but had not yet paid any or all of the deferred sales load. Paragraph (a)(7) would state specifically that this practice is permissible. Of course, before the variation is offered on new sales of fund shares, the fund's prospectus and statement of additional information would have to be amended in accordance with rule 22d–1(c).

9. No-Load Labeling

Paragraph (b) of the proposed rule would remove the exemption for any fund that charges a deferred sales load and holds itself out to the public as a "no-load" fund or uses terminology that, given the context and presentation, is likely to convey to investors the impression that the fund does not impose any charges for sales or promotional expenses. Similarly, if the proscribed activity was engaged in by any other person that would otherwise receive an exemption under the proposed rule, any affiliated person of that person, or any affiliated person of such affiliated person, the exemption would be unavailable to the person who

[53] *But see supra* note 22.

[54] *See supra* note 23 and accompanying text.

[55] *Id.*

[56] *See supra* note 28.

[57] *See Supra* note 27–29 and accompanying text.

engaged in such activity. Removal of the exemption would also pertain to any person relying on the exemption who causes the proscribed action to be taken.

The Commission previously has taken the position that it would be inappropriate and misleading for a fund that imposes a deferred sales load to be held out as a "no-load" fund.[58] Paragraph (b), therefore, would codify an existing Commission position. Further, even if funds that impose a deferred sales load are prohibited from being held out as "no-load," shareholders still could be misled by the use of language which simply avoids using the term "load." For instance, phrases such as "no front-end sales charge," or "no initial sales charge," without appropriate qualifying language, may convey to the prospective shareholder the same impression as the "no-load" label. Subtle distinctions between the term "load" and its descriptive substitutes might not be easily recognized by investors. Therefore, to avoid investor confusion, paragraph (b) of the proposed rule also would prohibit the use of terminology that, given the context and presentation, is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on fund shares.

10. Application to Series Companies

Paragraph (c)(1) of the proposed rule would provide that, for purposes of the rule, a registered open-end management investment company includes a separate series of such a company. Proposed paragraph (c)(1) would, therefore, require a fund to calculate any deferred sales load payable by considering only an investor's account in the particular series from which the shares are being redeemed. Funds would be prohibited from calculating the deferred sales load payable by aggregating all of an investor's accounts in a fund, regardless of the particular series from which the shares are being redeemed. Virtually all Applicants have represented that the CDSL will be imposed on a series-by-series basis.[59] Accordingly, proposed paragraph (c)(1) would codify ths practice and apply it to the other types of deferred sales loads permissible under the proposed rule.

This aspect of the proposed rule reflects the Commission's view that it is appropriate in the deferred sales load context to treat each individual series of a series fund as a separate fund.[60] The individual series of a series fund are, as a practical matter, separate investment companies. Separate series of a single fund typically have very different investment objectives and shareholders of an individual series hold interests only in that series' segregated portfolio. Because both the objectives and the portfolios of two series in one fund may be vastly different, the best interest of the shareholders of one series may or may not coincide with the best interests of the shareholders of another series. Accordingly, the nature of series companies justifies treating individual series as separate funds under the proposed rule. This would permit each individual series to structure deferred sales loads in the manner best suited to the needs of that series and its shareholders.

The Commission also is concerned that the possible complexity of calculating a deferred sales load on a fund-wide basis without regard to the particular series from which the shares are being redeemed could cause investor confusion and difficulty in computing the deferred sales load. In addition, an investor could be required to pay a higher deferred sales load than the investor would have to pay if the deferred sales load was calculated on the basis of only the series from which the shares were being redeemed. The Commission is aware however, that, in some instances, calculating a deferred sales load on a fund-wide basis may result in a lower deferred sales load. Accordingly, comment is specifically requested on whether and under what circumstances a fund-wide calculation should be permitted.

B. Proposed Amendments to Form N–1A

The Commission recently amended form N–1A to require all fund expenses, including deferred sales loads, to be disclosed in a table located near the front of the propspectus ("fee table").[61] The Commission proposes to modify the table to accommodate the deferred sales loads that would be permitted if rule 6c–10 is adopted. In the revised fee table, the fund would be required to list the maximum amount of deferred load as a percentage of the net asset value at the time of purchase and, where applicable, as a percentage of the net asset value at the time of redemption.[62] Consistent with the approach taken currently in form N–1A, the range of CDSLs over time may be disclosed in the fee table. As is the case with respect to front-end sales loads, however, other scheduled variations in deferred loads would not be listed in the fee table.[63]

Funds that permit deduction of a sales load in installments would list the maximum amount as a "deferred load" and may describe the amount and frequency of installments after the caption "Deferred Sales Load."[64] If the installment amounts or frequency of deduction vary so that a brief description after the caption is not practical, a fund may include a table of installment amounts within the larger fee table, unless the table would be so lengthy as to diminish the utility of the table as a device for easily comparing fund expenses. In that case, the table would direct that only the maximum amount of deferred load be listed in the table and a cross-reference provided to the textual discussion of sales load in the prospectus.[65] Comment is requested

[58] *See* Release No. 13048, *supra* note 13, at n. 6.

[59] The Commission has issued at least one exemptive order to an Applicant that represented that the CDSL payable would be the *lesser* of (i) the amount calculated based on the aggregate of the shareholder's accounts in the fund, with the result that aggregate purchase payments and current account value would be determined without regard to the particular series in which purchase payments were allocated or from which the redemption is made, or (ii) the amount calculated based only on the current value and aggregate purchase payments of the particular series from which the shares are being redeemed. *See* E.F. Hutton Investment Series, Inc., Investment Company Act Rel. Nos. 12079 (Dec. 4, 1981) [46 FR 60703, Dec. 11, 1981] (notice of application) and 12135 (Jan. 4, 1982) (order). However, this order was subsequently amended to require the calculation of the CDSL only on a series-by-series basis. *See* Investment Company Act Rel. Nos. 16426 (June 8, 1988) [53 FR 22255, June 14, 1988] (notice of application) and 16464 (July 1, 1988) (order).

[60] The Commission has treated the separate series of a series fund as separate investment companies for purposes of applying other rules under the Act. For example, rule 17a–7 [17 CFR 270.17a–7], which exempts from section 17(a) of the Act the purchase or sale of certain securities between a registered investment company and certain affiliated persons, treats the separate series of a single investment company as separate investment companies. *See* Investment Company Act Rel. No. 11676 (Mar. 10, 1981) [45 FR 17011, Mar. 17, 1981] (adopting rule 17a–7 under the Act). In addition, rule 12d3–1 [17 CFR 270.12d3–1] which, under certain conditions, permits registered investment companies to acquire securities issued by persons engaged directly or indirectly in securities-related businesses, provides that an individual series shall be treated as if it is a separate investment company. *See* Investment Company Act Rel. No. 14036 (July 13, 1984) [49 FR 29362, July 20, 1984] (adopting rule 12d3–1 under the Act). *See also* Release 16431, *supra* note 4 (proposing amendments to rule 12b–1).

[61] Investment Company Act Rel. No. 16244 (Feb. 1, 1988) [53 FR 3192, Feb. 4, 1988] ("Release 16244").

[62] Currently, the table requires that a deferred load be listed as "a percentage of original purchase price or redemption proceeds, as applicable."

[63] *See* Release 16244, *supra* note 61, at Section A.2.

[64] *See* proposed Instruction 5 to Item 2(a)(i) of form N–1A.

[65] *Cf.* Instruction 7 to Item 2(a)(i) of form N–1A, and proposed Instructions 10 and 11 to forms N–3 and N–4 in Investment Company Act Rel. No. 16482 (June 1, 1988) [53 FR 27872, July 25, 1988] ("Release 16482")

as to whether this approach would provide for adequate disclosure of deferred sales loads permitted under proposed rule 6c–10. In addition, comment is requested as to whether multiple fee tables should be allowed in situations that involve unusual complexity.[66]

C. Request for Comment on Rules 6c–8, 6e–2 and 6e–3 (T)

The imposition of sales loads on a deferred basis originated with separate accounts and is now a common practice in the insurance products area. Separate accounts should be subject to the same procedural requirements as mutual funds, absent a compelling need under the Act for special regulations arising from the nature of that insurance product.[67] The rules and proposed rule amendments governing the imposition of deferred sales loads by separate accounts do not presently include many of the conditions set forth in proposed rule 6c–10. In order to promote competitive equality among investment company products and enable separate account investors to receive benefits and protections comparable to those that would be available to mutual fund investors under proposed rule 6c–10, the Commission is considering whether to propose amendments to rule 6c–8 and 6e–3 (T), and issue revised proposed amendments to rule 6e–2, to require any separate account that wishes to impose a deferred sales load in reliance on those rules to comply with conditions similar to those contained in proposed rule 6c–10. the Commission therefore is requesting comment on insurance considerations relevant to amendments of these rules.[68]

[66] In Release 16482, *supra* note 65, the Commission published a staff guideline for the computation of amounts required to be listed under the Example portion of the fee table in variable annuity separate account prospectuses. A similar guide is under consideration for form N–1A and would be modified, if necessary, to accommodate sales loads deducted from shareholder accounts in installments. Comments is requested as to what modifications, if any, would be needed.

[67] *See* Investment Company Act Rel. No. 15586 (Feb. 26, 1987) [52 FR 7166, 7170, Mar. 9, 1987] (reproposing rule 26a–3 under the Act).

[68] Not all of the proposed conditions in rule 6c–10 would be relevant in the context of separate accounts. For instance, paragraph (a)(2) of proposed rule 6c–10, which would prohibit the imposition of a deferred sales load that, alone or in combination with a front-end sales load, would exceed the maximum charge permissible under the NASD Rules, would not be applicable to separate accounts. Rules 6c–8 and 6e–3(T), and the proposed amendments to rule 6e–2, already prohibit the total maximum sales load imposed on a contract, including any deferred sales load, from exceeding 9 percent of purchase payments. The Commission limited the total amount of sales loads (including deferred sales loads) charged by separate accounts to 9 percent of purchase payments, because such accounts are subject to section 27(a)(1) of the Act [15 U.S.C. 80a–27(a)(1)]. Section 27(a)(1) prohibits a registered investment company issuing periodic payment plan certificates from charging a sales load that exceeds 9 percent of purchase payments.

Cost Benefit of Proposed Action

Proposed rule 6c–10 would not impose any significant burdens on mutual funds. It would benefit mutual funds by reducing the costs that they would incur by virtually eliminating the need to file exemptive applications in this area. The proposed rule also would benefit mutual funds by giving them broader flexibility in the structuring of sales load arrangements. Additionally, the Commission would benefit because its staff would have to review very few applications for exemptive relief in this area. Comments are requested, however, on these matters and on the costs or benefits of any other aspect of the proposed action. Commenters should submit estimates of any costs and benefits perceived, together with any supporting empirical evidence available.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 6c–10 and the proposed amendments to form N–1A. The Analysis explains that proposed rule 6c–10 would permit mutual funds to impose sales loads on a deferred basis. It states that the proposed rule would give mutual funds broader flexibility in the structuring of sales load arrangements. The proposed rule could also reduce significantly the number of exemptive applications filed with the Commission in this area, and, therefore, reduce the costs incurred by smaller entities in preparing and filing exemptive applications. The Analysis also states that, to the extent funds would be required to maintain records to track and assess deferred sales loads, such recordkeeping is comparable to that currently practiced by funds with exemptive orders. The proposed amendments to form N–1A would modify that form to accommodate the deferred sales loads that would be permitted if rule 6c–10 is adopted. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Rochelle G. Kauffman, Esq., Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Proposed Amendments to Form

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, 80a–39; the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted. * * * Section 270.6c–10 is also issued under Secs. 6(c) [15 U.S.C. 80a–6(c)] and 22(c) [15 U.S.C. 80a–22(c)].

2. By adding § 270.6c–10 to read as follows:

§ 270.6c–10 Exemptions for registered open-end management investment companies other than registered separate accounts to impose deferred sales loads.

(a) A company or any other exempted person as defined in paragraph (c)(2) shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), 80a–22(c) and 80a–22(d), respectively] and rule 22c–1 under the Act [17 CFR 270.22c–1] to the extent necessary to permit a deferred sales load to be imposed on shares issued by the company, *provided that*:

(1) (i) The amount of a deferred sales load payable upon redemption is calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption;

(ii) The amount of any installment payment of a deferred sales load is calculated as a specified percentage of the net asset value of the shares at the time of purchase or as a specified dollar amount, except that such a deferred sales load may be calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time the installment payment is deducted from a shareholder's account;

(2) The maximum amount of any deferred sales load, or combination of deferred sales load and any sales load payable at the time the shares are purchased, does not exceed the maximum sales charge that could have

been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice Promulgated by the National Association of Securities Dealers;

(3) No amount is charged to shareholders or to the fund that is intended as payment of interest or any similar charge related to a deferred sales load;

(4) No deferred sales load is imposed on an amount that represents an increase in the value of company shares due to capital appreciation;

(5) No deferred sales load is imposed on shares, or amounts representing shares, purchased through the reinvestment of dividends or capital gains distributions;

(6) If all or part of a deferred sales load is payable at the time shares are redeemed, then shares, or amounts representing shares, that are not subject to any deferred sales load are redeemed first, and other shares or amounts are then redeemed in the order purchased, *provided, however,* another order of redemption may be used if such order would result in the redeeming shareholder paying a lower deferred sales load; and

(7) The same deferred sales load is imposed on all shareholders except that scheduled variations in or elimination of deferred sales loads may be offered to particular classes of shareholders or in connection with particular classes of transactions if the conditions contained in paragraphs (a) through (d) of rule 22d–1 under the Act [17 CFR 270.22d–1] are satisfied with respect to such scheduled variations. Nothing in this paragraph shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load that has not yet been paid.

(b) Any exempted person, or any affiliated person of such exempted person (or any affiliated person of such affiliated person), who holds a company out to the public, or who, directly or indirectly, causes a company to be held out to the public, as being "no-load" or uses, or who, directly or indirectly, causes the use of, terminology that, given the context and presentation, is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on shares issued by the company, shall not be entitled to the exemption provided in paragraph (a).

(c) For purposes of this rule:

(1) "Company" means a registered open-end management investment company, other than a registered separate account, and includes a separate series of such a company;

(2) "Exempted person" includes any company and any principal underwriter of, dealer in, or person authorized to consummate transactions in securities issued by such company;

(3) "Deferred sales load" means any amount propely chargeable to sales or promotional expenses that is or may be deducted directly from a shareholder's account in one or more installments during the term of the investment, or upon redemption, or both. This term shall include, but is not limited to, a contingent deferred sales load within the meaning of paragraph (c)(4); and

(4) "Contingent deferred sales load" means a deferred sales load that is paid, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the company.

3. By proposing to amend Item 2(a)(i) and Instruction 5 of Item 2(a)(i) of Form N–1A, described in § 239.15A and 274.11A, to read as follows:

Item 2. Synopsis

(a)(i) Include a table furnishing the following information, using the caption provided, in the format illustrated below:

* * * * *

Deferred Sales Load (as a percentage of the net asset value at the time of purchase, and, where applicable, as a percentage of the net asset value at the time of redemption)

* * * * *

Instructions:

* * * * *

Shareholder Transaction Expenses

5. "Deferred Sales Load" includes, but is not limited to, the maximum contingent deferred sales load, expressed as the lesser of a percentage of the net asset value at the time of purchase or of the net asset value at the time of redemption.

(a) The table may not include scheduled variations of a deferred sales load, but, instead, the brief narrative following the table should provide a cross-reference to the narrative portion of the prospectus discussing variations.

(b) If the Registrant permits the sales load to be paid in installments pursuant to rule 6c–10 [17 CFR 270.6c–10], the table should disclose the maximum deferred load, and may disclose the installment amounts (or percentage amounts) and frequency of deduction, which should be described after the caption "Deferred Sales Load," *e.g.,* 2% per year not to exceed 8% of net asset value at the time of purchase. However, if the installment amounts or frequency of deduction vary so that a brief description following the caption is impractical, the Registrant may include a tabular presentation of installments unless such a presentation would be so lengthy as to encumber the larger table. In that case, the Registrant should list only the maximum amount and provide a cross-reference to the narrative portion of the prospectus discussing the sales load.

(c) If the Registrant imposes a contingent deferred sales load as defined in rule 6c–10(c)(4), the table may include a tabular presentation, within the larger table, of the range of the contingent deferred sales load over time.

By the Commission.

Jonathan G. Katz,

Secretary.

November 2, 1988.

[FR Doc. 88–25863 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3445–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a request for monthly averaging and a relaxation from Ohio's reasonably available control technology (RACT) requirements for volatile organic compound (VOC) emissions for an architectural aluminum extrusion coating line (K001) at Easco Aluminum Corporation (Easco). This facility is located in Trumbull County, Ohio.

USEPA is proposing to disapprove this SIP revision, because it has not been demonstrated that add-on controls for Easco are economically infeasible, that application of RACT on less than a monthly basis is infeasible, and that a permanent relaxation is warranted.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 9, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43210

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On September 11, 1985, the Ohio Environmental Protection Agency (OEPA) submitted a proposed revision to its ozone SIP, allowing monthly averaging and relaxation from Ohio's RACT [1] VOC regulations for an architectural aluminum extrusion coating line (K001). This operation is located at the Easco Facility in Trumbull County [2] Ohio, a nonattainment area for ozone.

On March 25, 1986, USEPA notified OEPA that the September 11, 1985, submittal requesting a monthly averaging and a RACT relaxation for Easco was deficient as stated in USEPA's technical support documents (TSD) dated February 5, 1986, and March 14, 1986. OEPA submitted supplemental information on July 7, 1986, and August 18, 1986, to support this revision.

Ohio's SIP

Under the existing federally approved SIP for Ohio, the architectural aluminum extrusion coating line (K001) is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1)(a)(iii) which limits the VOC content of extreme performance coatings applied to miscellaneous metal parts and products to 3.5 pounds of VOC per gallon of coating, minus water. OAC Rule 3745–21–04(C)(28) requires compliance with the limit by December 31, 1982. USEPA approved these rules as meeting the RACT requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

Summary of SIP Revision

Easco's Girard Extrusion Division is an aluminum extrusions facility which applies paint to extruded parts. Easco operates one electrostatic spray coating line which applies a wide range of coatings (approximately 80 different coating per month) to products in the architectural and transportation vehicles industries. Approximately 30 percent of the paint used is white paint that has been in compliance since October 1, 1984. Bronze and several other colors accont for an additional 30 percent which are now in compliance. The remaining 40 percent of coatings are high performance architectural coatings and flexible recreational vehicle coatings.

Easco's aluminum extrusion paint line is subject to OAC Rule 3745–21–09(U)(1)(a)(iii) which limts extreme performance coatings used on miscellaneous metal parts and products to 3.5 pounds of VOC per gallon of coating, minus water. OAC Rule 3745–21–04(C)(28) requires compliance with this limit by December 31, 1982.

The Ohio Environmental Protection Agency has proposed to specify the following allowable VOC emission limitations to be met by November 30, 1985, for Easco's paint line in lieu of OAC Rules 3745–21–09(B) and 3745–21–09(U)(1)(a)(iii):

(a) The VOC content of each coating employed in this coating line, excluding the high performance aluminum coatings, shall not exceed 3.5 pounds of VOC per gallon of coating, excluding water, as a monthly, volume-weighted

(b) In addition, a VOC emission ceiling (for any coating) is established at 6.2 pounds of VOC per gallon of coating employed, minus water, in order to ensure that maintenance of the ozone NAAQS is not jeopardized.

Extended Averaging Time Criteria

USEPA's January 20, 1984, policy memorandum, entitled "Averaging Times for Compliance With VOC Emission Limits", contains the following criteria for evaluating VOC requests for extended averaging.

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

Criterion 2

Sources in areas lacking approved SIPs, or in areas with approved SIPs but showing measured violations, cannot be considered for longer term averages until the SIP has been revised demonstrating ambient standards attainment and maintenance of reasonable further progress (RFP) (reflecting the maximum daily emissions from the source with long-term averaging).

Criterion 3

A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP.

Criterion 4

Averaging time must be as short as practicable, and in no case longer than 30 days.

Analysis

For a RACT relaxation to be approved, it must be demonstrated that the RACT-level emission limit for Easco is technically or economically infeasible. OEPA determined the cost-effectiveness, based on an 81 percent overall efficiency and fuel costs only, to be reasonable compared to the cost analysis of the miscellaneous metals Control Techniques Guidelines (CTG).

In addition, for an extension of the averaging time to 30 days to comply with the VOC emission limit, Easco must demonstrate that it is not possible to meet the 3.5 pounds of VOC per gallon of coating, excluding water, limit using a shorter averaging period. Easco has failed to make this demonstration.

If the State demonstrates conclusively that complying low-solvent coastings are unavailable, then the USEPA would consider an alternative RACT determination for the existing coastings.

A detailed discussion of the extent of an acceptable investigation is contained in Appendix A of this document.

USEPA is proposing to disapprove this SIP revision because Easco has not demonstrated that add-on control is economically infeasible and that a shorter averaging period is not practicable.

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[1] A defintion of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] Trumbull County is an area that is unmonitored for ozone. Trumbull County adjoins Mahoning County's northern border. The available meteorological data imply that Trumbull County is downwind of Youngstown, Ohio, (Mahoning County), the closest significant source area of ozone precursors and the only adjoining major urbanized area. OEPA submitted a request to revise the attainment status designations, at 40 CFR 81.336, for Mahoning County and Trumbull County from nonattainment to attainment for the ozone national ambient air quality standard (NAAQS). USEPA will propose action on Ohio's request in a separate **Federal Register** notice. Mahoning County and Trumbull County, at this time, are still designated as nonattainment areas. There have been, however, no measured violations of the ozone NAAQS from 1982 through 1985 in Mahoning County.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before December 9, 1988, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

Under 5 U.S.C. Section 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities, because the effect of this disapproval is to leave in effect existing emission limitations. Therefore, there is no change or any impact on any source or community. Additionally, it applies to only one major corporation, Easco.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: February 6, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note.—This document was received at the office of the Federal Register November 3, 1988.

Note: This appendix will not appear in the Code of Federal Regulations

Appendix A

The Clean Air Act requires that SIPs for areas not in attainment of the NAAQS by August 7, 1977 must provide for the implementation of RACT as expeditiously as practicable. 42 U.S.C. 7502(b)(2). EPA has defined RACT as—

> The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasiability. 44 Fed. Reg. 53762 Col. 1 (September 17, 1979).

Through the issuance of Control Technique Guidelines (TCGs) EPA has identified pollutant control levels that USEPA presumes to constitute RACT for various categories of sources. Where the State finds the presumptive norm applicable to an individual source or group of sources, the State typically adopts requirements consistent with the presumptive norm. However, the presumptive norm is a recommendation, and States may develop case-by-case RACT determinations independently of EPA's recommendation. EPA will approve these RACT determinations as long as the States shows they will satisfy the Clear Air Act's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated.[1]

In light of these requirements, EPA will approve an alternative RACT requirement only if the State demonstrates that the requirement does in fact constitute RACT. To make this demonstration, the State must show that in fact the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not—and is not expected to be—reasonably available. EPA will determine whether the State makes this demonstrations on a case-by-case basis, taking into account all the relevant facts and circumstances concerning each case.

In making these demonstrations, the State must make reasonable efforts to determine and adequately document the availability of complying coatings or other kinds of control, as appropriate. The State is free to consult informally with EPA to determine whether EPA has up-to-date information concerning the availability of particular coatings or other kinds of control. If EPA does not have up-to-date information, the State must undertake further efforts. Examples of these efforts include examining information that is or should be reasonably available to the State, including whether sources operating in the State that are in an industry comparable to the source at issue (*e.g.*, within the same CTG category) achieve compliance with the SIP, by the SIP approved compliance scheduel, by using complying coatings, or other kinds of control, that the source could adopt. In addition, if the State participates in a formally established, multi-state pollution control group or commission, EPA presumes that the State has reasonable access to information concerning whether sources operating in the other States that are members of the group or commission use complying coatings, or other controls. Thus, the State must examine available information concerning sources in those other States. Reasonable efforts by the State also include seeking information reasonably available to the source requesting the SIP revision, including, for example, contacting suppliers available to the source to determine if they have complying coatings or other controls; contacting trade associations to determine if they know of complying coatings or other controls; and reviewing trade publications containing information concerning complying coatings or other controls.

It seems appropriate for the source to make a showing that process changes, such as switching to low solvent coatings are not available. If low solvent coatings (or other process changes) meeting the Control Technique Guideline (CTG)—recommended emission level are shown not to be feasible for a particular source, then the source should identify the lowest level of volatile organic compound (VOC) emissions that is available for that source or type of coating.

Assuming that a source has prepared an adequate showing that abatement ("add-on") controls are not feasible, an example of an action that a source might perform to demonstrate to the State that no complying coating is available would be for the company to place two consecutive advertisements in each of three leading paint trade journals (*e.g., Industrial Finishing, Products Finishing, Modern Paint and Coatings, JCT-Journal of Coatings Technology, American Paint and Coatings Journal*) and describe the application and product specifications for a low solvent paint which they are seeking. This advertisement should solicit paint companies to provide a low VOC product meeting those specifications. The responses which the company receives could be provided to EPA as proof that this type of product does or does not exist. The advertisement in a trade journal would reach a wide number of paint producers, some of whom may have developed suitable low VOC products. When reporting the response to the advertisement to EPA, the State should report the lowest VOC content coating that is available for the particular job, even if that coating does not meet the CTG recommended limit.

[1] More specifically EPA has described RACT and the obligations of the States as follows:

Along with information, each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT, based on EPA's current evaluation of the capabilities and problems general to the industry. Where the States finds [sis] the presumptive norm applicable to an individual source or group of sources, EPA recommends that the State adopt requirements consistent with the presumptive norm level in order to include RACT limitations in the SIP.

However, recommended controls are based on capabilities and problems which are general to the industry; they do not take into account the unique circumstances of each facility. In may cases appropriate controls would be more or less stringent. States are urged to judge the feasibility of imposing the recommended controls on particular sources, and adjust the controls accordingly.

The presumptive norm is only a recommendation. For any source or group of sources, regardless or whether they fall within the industry norm, the States may develop case-by-case RACT requirements independently of EPA's recommendation. EPA will propose to approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT based on the economic and technical circumstances of the particular sources being regulated. 44 FR 53762–63 (September 17, 1979).

Another example of an approach that a metal coater might use in demonstrating the unavailability of complying coatings for a particular product would be to contact a trade association which represents a large number of manufacturers of low VOC coatings (*e.g.*, the Powder Coating Institute). If such an association documents that none of its members can provide a low solvent complying coating for this product, then this trade association reply could be used to show that a reasonable effort had been made to find a complying product and that such a product apparently does not currently exist. If, through efforts such as those described above, the source makes a convincing demonstration that complying products are not available in the industry, State would not be required to make duplicative efforts.

If, after the reasonable efforts described above are expended, and the State finds that no complying coatings or other controls as appropriate are available, EPA itself may make an independent assessment of the availability of such coatings or controls and the compliance status of other sources in the same CTG category.

[FR Doc. 88-25771 Filed 11-8-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-62059A; FRL-3475-5]

Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is announcing that it is extending the period for receipt of written comments on the proposed rule on notification and manifesting for PCB waste activities, which was published in the **Federal Register** on September 26, 1988. The written comment period is being extended until November 25, 1988, to provide additional time to prepare and submit comments. In addition, the date for the informal hearing on the proposed rule is being changed to December 13, 1988.

DATES: Written comments must be received by November 25, 1988. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC, on December 13, 1988. The hearing is presently scheduled to take place in the public auditorium of the Disabled American Veterans Building, 807 Maine Avenue SW., from 9:30 a.m. to 12:30 p.m. Participants are encouraged to call the TSCA Assistance Office at the telephone number listed under **"FOR FURTHER INFORMATION CONTACT"** to verify the exact time and location. Written requests to participate in the informal hearing must be received by the TSCA Assistance Office or postmarked no later than November 22, 1988.

ADDRESSES: Submit written comments, in triplicate, identified by the document control number OPTS 62059, by mail to: TSCA Public Docket Office (TS-793), Rm. NE G004, Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedure set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be disclosed publicly by EPA by placing it in the public record without prior notice to the submitter. All written comments will be available for public inspection and copying at the TSCA Public Docket Office, in Rm. NE G004, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202-554-1404), TDD: (202-544-0557).

SUPPLEMENTARY INFORMATION: In the **Federal Register** published on September 26, 1988 (53 FR 37436), EPA announced proposed amendments to its existing disposal and storage regulations for polychlorinated biphenyls (PCBs). The proposed rule notice published on that date included a proposal to add a tracking system for PCB wastes, a proposal to add to the regulations an approval process for certain commercial storers of PCB wastes, and a proposal to add certain recordkeeping and reporting requirements to facilitate the implementation of the proposed waste tracking system. The proposed rule notice published on September 26, 1988 required that written comments be submitted by no later than October 26, 1988. The previously issued notice also stated that upon request, EPA would hold an informal hearing on the proposed rule in Washington, DC, on November 9, 1988.

Since the publication of the proposed rule notice, EPA has received several written requests asking EPA to grant commentors an additional 30 days to prepare and submit their written comments. These petitioners have alleged in their written requests that the 30-day comment period required under the September 26, 1988 proposed rule notice has caused them hardship, and that they need the additional 30 days to provide EPA with meangingful comments. The associations which filed the written requests for extensions represent many of the generators, storers, transporters, and disposers of PCB wastes which the proposed regulatory amendments would affect, and they assert that a 30-day comment period is insufficient to enable them to survey their membership and to consider all aspects of the proposed amendments. Other commentors have telephoned the TSCA Assistance Office (TAO) to express similar concerns about the 30-day public comment period.

EPA believes that there is merit to the requests for extensions of the public comment period. The proposed rule published on September 26, 1988 is a lengthy and fairly complex document, and EPA appreciates the difficulties involved in circulating, reviewing, digesting, and responding to such a significant document within only 30 days. EPA does not believe that the exigencies of promulgating this regulation promptly merit cutting off the submission of detailed and meaningful comments by the petitioners. In addition, EPA believes that there are other persons who have only recently become aware of the proposal. If EPA were to cut off the receipt of comments after only 30 days, these commentors would not enjoy any real opportunity to participate in the rulemaking. Therefore, to avoid the confusion and potential for any unfairness occasioned by the 30-day comment period, EPA is granting petitioners' requests that EPA extend the period for submitting written comments an additional 30 days. Accordingly, main written comments on this proposed rule are now due by no later than Friday, November 25, 1988.

The extension of the written comment period also requires that EPA modify its plans for the informal hearing on this proposed rule. The regulations governing public comment on rules issued under section 6 of the Toxic Substances Control Act require that the due date for public comments be at least 2 weeks

prior to any informal hearing. See 40 CFR 750.3(c)(3). Therefore, EPA is designating Tuesday, December 13, 1988 as the date for the informal hearing in Washington, DC.

Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request to participate must be sent to the TSCA Assistance Office at the address listed under "**FOR FURTHER INFORMATION CONTACT.**" The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not file main comments in the rulemaking will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

All correspondence relating to requests for extensions to the public comment period have been entered in the public record for this rulemaking.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: October 31, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-26053 Filed 11-7-88; 2:45 pm]

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40 CFR Parts 795 and 799

[OPTS-42084F; FRL 3473-3]

Commercial Hexane; Proposed Pharmacokinetics Test Requirements and Revision of Proposed Test Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is reproposing under section 4(a) of the Toxic Substances Control Act (TSCA) the pharmacokinetics test requirements and the associated test guideline for commercial hexane. This proposed rule complements a final test rule (53 FR 3382; February 5, 1988) issued under section 4(a)(1)(B) of TSCA that requires manufacturers and processors of commercial hexane to test it for subchronic toxicity, oncogenicity, reproductive toxicity, developmental toxicity, mutagenicity, neurotoxicity, and pharmacokinetics.

DATES: Submit written comments on or before December 27, 1988. If persons request an opportunity to submit oral comments by December 9, 1988, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at this meeting, see Unit VII of this preamble. The incorporation by reference in this rule shall become effective 44 days after date of publication of the final rule in the **Federal Register**.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42084F) in triplicate to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is reproposing the pharmacokinetics test requirements and the associated test guideline in 40 CFR 795.323 for commercial hexane (previously proposed May 15, 1986, 51 FR 17854).

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

I. Background

On May 15, 1986, EPA proposed pharmacokinetics testing of commercial hexane at 40 CFR 795.232 (51 FR 17854). Prior to issuing the final test rule for commercial hexane (53 FR 3382; February 5, 1988), EPA determined from an internal review that inadequacies in the proposed guideline for pharmacokinetics testing would limit the ability to obtain meaningful data. When the final test rule for commercial hexane was issued, EPA required that test sponsors perform pharmacokinetics testing but stated that it would propose a revised test standard and reporting requirements at a later date. EPA is now proposing a revised test standard and reporting requirements.

II. Proposed Pharmacokinetics Test Standard

EPA is proposing that the required pharmacokinetics testing for commercial hexane be conducted according to the inhalation and dermal pharamcokinetics test guideline described in this rule. Pharmacokinetics testing is necessary to determine the absorption, distribution metabolism, and excretion of commercial hexane by inhalation and dermal routes of administration. Data from these studies will help EPA evaluate whether exposure to commercial hexane presents an unreasonable risk of injury to human health.

The purposes of these studies are to: (1) Compare the pahrmacokinetics and metabolism of commercial hexane after inhalation and dermal administration, (2) compare the bioavailability of commercial hexane after inhalation and dermal administration and (3) examine the effects of repeated doses on the pharmacokinetics and metabolism of commercial hexane.

EPA proposes that investigators use 7- to 9-week old rats and 5- to 7-week old female guinea pigs for these studies. Both species have been used extensively for percutaneous absorption studies. Two doses would be required in these studies, a "low" dose and a "high" dose. The "high" dose should ideally induce some measurable toxicity such as weight loss. The "low" dose should correspond to a no observed effect level (NOEL). If possible, the same "high" and "low" doses would be administered by inhalation and dermal contact. The proposed studies would measure blood concentrations, urinary and fecal excretion, and metabolites of the test substances.

As stated in the February 5, 1988 preamble, EPA agrees with the American Petroleum Institute (API) that isotopically labelling all component of commercial hexane would be excessively burdensome. Consequently, EPA is proposing that each pharmacokinetics test described in this document be performed separately with commercial hexane containing two different radiolabeled test substances.

As suggested by API, one test mixture would contain ^{14}C methycyclopentane (MCP) and the other would contain ^{14}C *n*-hexane. (Ref. 1). An intravenous test has also been added to the protocol to obtain baseline information on the metabolism and excretion of the test substances when it is completely absorbed. This data would permit comparisons of absorption and metabolic processes operating via dermal and inhalation routes of exposure by monitoring excretion (urine, feces, expired air) of test substances during the study and tissue distribution of test substances at the end of the study.

EPA believes that this test methodology will provide the basis for a valid and scientifically acceptable test. EPA is proposing that the test guideline described in this document be adopted as the test standard for the pahrmacokinetics studies on commercial hexane. All persons conducting tests would submit plans and conduct tests in compliance with the TSCA Good Labaratory Practice (GLP) Standards found in 40 CFR Part 792.

III. Reporting Requirements

All data developed under this proposed rule would be reported in accordance with TSCA GLPL Standards.

As described in 40 CFR 790.50 under single-phase rulemaking procedures, test sponsors would submit a study plan no later than 45 days before the initiation of pharmacokinetics testing.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. EPA is proposing that the test sponsors complete the pharmacokinetics testing and submit the final report to EPA within 18 months of the effective date of the final test rule establishing pharmacokinetics tests standards and reporting requirements. Interim progress reports would be provided to EPA at 6-month intervals, beginning 6 months after the effective date of the final rule establishing test standards and reporting requirements for the required pharmacokinetics testing, until the final report has been submitted to EPA.

IV. Issues for Comment

EPA is soliciting comments on the suitability of the revised inhalation and dermal pharmacokinetics test standard proposed by the Agency for the testing of commercial hexane.

V. Economic Analysis

To assess the potential economic impact of the final test rule for commercial hexane published in the **Federal Register** of February 5, 1988, EPA has estimated the cost of the testing regimen. Total test costs for the final test rule were estimated to range from $2.2 to $2.9 million. As a result of these costs, EPA determined that the likelihood of significant adverse economic impact was low for the manufacturers of commercial hexane.

In accordance with the specifics of this new protocol, EPA has reevaluated the cost of conducting pharmacokinetics testing on commercial hexane. This procedure is estimated at $208,000 to $262,000. This revised estimate is discussed in more detail in a memorandum in the rulemaking record (Ref. 2).

On the basis of the costs estimated in the economic analysis for the final commercial hexane test rule, and the incremental cost of this pharmacokinetics procedure, the additional testing cost will not result in any change from the conclusions of the prior economic analysis. Refer to the economic impact analysis of the final test rule for commercial hexane for a complete discussion of potential economic impact.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "* * * the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82–140773). On the basis of this study, EPA believes that there will be test facilities and personnel available to perform the testing proposed in this rule.

VII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting in Washington, DC subsequent to the close of the public comment period. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554–1404, by December 9, 1988. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to public, active participation will be limited to those persons who arrange to present comments and to designated EPA participants. Persons wishing to attend should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, EPA would transcribe the meeting and include the written transcript in the rulemaking record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42084F). This record includes the basic information considered by EPA in developing this rule and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this proposed test standard consisting of:

(a) Notice of final rule of EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(b) Notice of proposed test rule on methylcyclopentane and commercial hexane (51 FR 17854; May 15, 1986).

(c) Notice of final test rule for commercial hexane and methylcyclopentane (53 FR 3382; February 5, 1988).

B. References

(1) American Petroleum Institute (API). Letter from Steven M. Swanson, Director, Health and Environmental Affairs Department, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rule (September 15, 1986).

(2) USEPA. Internal memorandum from Mark Dreyfus, Regulatory Impacts Branch, to Catherine Roman, Test Rules Development Branch, discussing the cost of the new pharmacokinetics testing protocol for commercial hexane (August 2, 1988).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, NE–GOO4, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Other Regulatory Requirements

A. Executive Order 12291

EPA has judged that the final test rule for commercial hexane was not subject to the requirement of a Regulatory Impact Analysis under Executive Order 12291. EPA has determined that this proposed test rule for pharmacokinetics testing does not alter this determination.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA has certified that the final test rule for commercial hexane would not have a significant impact on a substantial number of small businesses. The proposed pharmacokinetics test standard and reporting requirements do not change this determination.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Laboratories, Recordkeeping and reporting requirements, Testing.

Dated: November 1, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I, Subchapter R, be amended as follows:

1. In Part 795:

PART 795—[AMENDED]

a. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding new § 795.232 to read as follows:

§ 795.232 Inhalation and dermal pharmacokinetics of commercial hexane.

(a) *Purposes.* The purposes of these studies are to:

(1) Determine the bioavailability of the test substances after dermal and inhalation administration.

(2) Compare the pharmacokinetics and metabolism of the test substances after intravenous, dermal, and inhalation administration.

(3) Examine the effects of repeated doses on the pharmacokinetics and metabolism of the test substances.

(b) *Definitions.* (1) "Bioavailability" refers to the rate and relative amount of administered test substance which reaches the systemic circulation.

(2) "Metabolism" means the study of the processes by which a particular substance is absorbed, distributed, biotransformed, stored, and excreted by the body.

(3) "Percent absorption" means 100 times the ratio of the total radioactivity excreted following dermal or inhalation administration and total radioactivity excreted following intravenous administration of the test substance.

(4) "Pharmacokinetics" means the study of the rates of absorption, tissue distribution, biotransformation, and excretion.

(5) "Low dose" should correspond to the no-observed-effect level (NOEL).

(6) "High dose" should induce some measurable effect such as weight loss.

(7) "Test substance" refers to the nonradioactive and both radiolabeled mixtures (^{14}C *n*-hexane and ^{14}C methylcyclopentane) of commercial hexane used in the testing.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat shall be used for pharmacokinetics testing because it has been used extensively for metabolic and toxicological studies. The female guinea pig shall be used for dermal bioavailability tests.

(ii) *Animal strains.* Adult male and female rats and female guinea pigs shall be used for testing. The rats shall be 7 to 9 weeks old and their weight range should be comparable from group to group. The female guinea pigs shall be 5 to 7 weeks old, and their weight range should be comparable from group to group. The animals shall be purchased from a reputable dealer and shall be permanently identified upon arrival. The animals shall be selected at random for the testing groups, and any animal showing signs of ill health shall not be used.

(iii) *Animal care.* (A) Animal care and housing shall be in accordance with DHEW Publication No. (NIH)–86–23, revised 1985, "Guide for the Care and Use of Laboratory Animals."

(B) The animals shall be housed in environmentally controlled rooms with at last 10 air changes per hour. The rooms shall be maintained at a temperature of 24 ± 2 degrees centigrade and humidity of 50 ± 10 percent with a 12-hour light/dark cycle per day. The animal subjects shall be kept in a quarantine facility for at least 7 days prior to use, and shall be acclimated to the experimental environment for a minimum of 48 hours prior to treatment.

(C) During the acclimatization period, the rats and guinea pigs shall be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum.* The guinea pig diet shall contain adequate amounts of ascorbic acid.

(2) *Administration of test substances*—(i) *Test substances.* The study will require the use of nonradioactive and radioactive test substances. These test substances shall be identical in chemical composition, and shall contain at least 40 liquid volume percent but no more than 55 liquid volume percent *n*-hexane and no less than 10 liquid volume percent methylcyclopentane (MCP) and otherwise conform to the specifications prescribed in the American Society for Testing and Materials Designation D 1836–83 (ASTM D 1836), "Standard Specification for Commercial Hexanes", published in the *1986 Annual Book of ASTM Standards: Petroleum Products and Lubricants,* ASTM D 1836–83, pp. 966–967, 1986, which is incorporated by reference. ASTM D 1836 is available for public inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC. and copies may be obtained from the EPA, TSCA Public Docket Office, Room NE G–004, 401 M Street SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Office of the Federal Register in

accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. This material is incorporated as it exists on the date of approval, and a notice of any change in this material will be published in the **Federal Register.** Two kinds of radioactive test substances shall be tested. ^{14}C *n*-hexane shall be the only radioactive component of one, and ^{14}C MCP shall be the only radioactive component of the other radioactive test substance.

(ii) *Dosage and treatment*—(A) *Intravenous.* The low dose of each test substance, in an appropriate vehicle, shall be administered to four rats of each sex.

(B) *Inhalation.* Two concentrations of each test substance shall be used in this portion of the study, a low concentration and a high concentration. The high concentration should ideally induce some overt toxicity, while the low concentration should correspond to the NOEL. In addition, the high concentration should not exceed the lower explosive limit of the test substance. Inhalation treatment shall be conducted using a "nose-cone" or "head only" apparatus to reduce ingestion of the test substance through "grooming."

(C) *Dermal—(1) Dermal absorption studies.* Dermal treatment should be conducted by the methodology of System, A.S., Dames, B.L. and Niemeier, R.W., "*In vivo* percutaneous absorption studies of volatile solvents in hairless mice. I. Description of a skin depot", In: *Journal of Applied Toxicology* 6:43–46, (1986), or by some other suitable modification because the test substances have significant volatility. The high and low doses shall be tested in rats and guinea pigs.

(*2*) *Washing efficacy study.* Before performing the dermal absorption studies, a washing efficacy study shall be conducted to assess the removal of the applied low dose of test substance by washing the exposed skin area with soap and water, and an appropriate organic solvent. The low dose shall be applied to separate groups of four rats and four female guinea pigs in accordance with paragraph (c)(2)(ii)(C)(*1*) of this section. Two to five minutes after application, the treated areas of two rats and two guinea pigs shall be washed with soap and water and the treated areas of the remaining animals shall be washed with an appropriate solvent. The amount of test substance recovered in the washing solutions shall be determined to assess the efficacy of its removal by washing.

(iii) *Dosing and sampling schedule*—(A) *Rat studies.* Each experimental group shall contain at least four animals of each sex. After administration of the test substance, each rat shall be placed in an individual metabolic unit for collection or urine, feces, and expired air. For the inhalation of and dermal studies, excreta from the rats shall also be colleced during the exposure periods. At the end of each collection period, the metabolic cages shall be cleaned to recover any excreta that might adhere to the cages. All studies, except the repeated dose studies, shall be terminated at 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first. All studies described below shall be conducted separately with each radiolabeled test substance.

(*1*) *Intravenous study.* Group A shall be given a single intravenous low dose of the labeled test substance (containing either ^{14}C *n*-hexane or ^{14}C MCP) at the low dose.

(*2*) *Inhalation studies.* A single 6-hour exposure period shall be used for each group.

(*i*) Group B shall be exposed to a mixture of the labeled test substance in air at the low concentration.

(*ii*) Group C shall be exposed to a mixture of the labeled test substance in air at the high concentration.

(*3*) *Dermal studies.* The test substance shall be applied and kept on the skin for a minimum of 6 hours. At the time of removal of the covering apparatus, the treated area shall be washed with an appropriate solvent to remove any test substance that may be on the skin surface. The covering apparatus components and the washing solutions shall be assayed to recover residual radioactivity. At the termination of the studies, each animal shall be sacrificed and the exposed skin area removed. An appropriate section of the skin shall be solubilized and assayed for radioactivity to ascertain whether the skin acts as a reservoir for the test substance.

(*1*) Group D shall be given one dermal, low dose of the labeled test substance.

(*ii*) Group E shall be given one dermal, high dose of the labeled test substance.

(*4*) *Repeated dosing study.* Group F shall receive a series of single daily 6-hour inhalation doses of nonradioactive test substance at the low dose over a period of at least 7 days. A single 6-hour inhalation dose of the radioactive test substance (^{14}C *n*-hexane or ^{14}C MCP) at the low dose shall be administered 24 hours after the last nonradioactive dose. Following administration of the radioactive substance, the rats shall be placed in individual metabolic cages. Excreta shall also be collected during the exposure periods. The study shall be terminated 7 days after the last dose, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(B) *Guinea pig studies*—(*1*) *Intravenous study.* The study conducted on group A as specified in paragraph (c)(2)(iii)(A)(*1*) of this section shall be repeated using four guinea pigs per group (group G).

(*2*) *Dermal studies.* The studies conducted on groups D and E as specified in paragraph (c)(2)(iii)(A)(*3*) of this section shall be repeated using four female guinea pigs per group.

(i) Group H shall be given one dermal low dose of test labeled test substance.

(*ii*) Group I shall be given one dermal high dose of labeled test substance.

(*iii*) After administration of the test substance, each guinea pig shall be kept in a separate metabolic unit to facilitate collection of excreta. At the end of each collection period, the metabolic units shall be cleaned to recover any excreta that might adhere to them. All studies shall be terminated at 7 days, or after 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(3) *Types of Studies*—(I) *Pharmacokinetics studies*—(A) *Rat studies.* Groups A, B, C, D, E, and F shall be used to determine the kinetics of absorption of the test substance. In animal subjects administered the test substance intravenously (i.e., Group A), the concentration of radioactivity in blood and excreta shall be measured following administration. In animal subjects administered the test substance by the inhalation and dermal routes (i.e., Groups B, C, D, E, and F), the concentration of radioactivity in blood and excreta shall be measured at selected time intervals during the following exposure period to allow calculations of uptake, half lives, and clearance. In addition, in the groups administered the test substance by inhalation (i.e., Groups B, C, and F), the concentration of test substance in the exposure chamber air shall be measured at selected time intervals during the exposure period.

(B) *Guinea pig studies.* Groups H and I shall be used to determine the extent to which the test substance is metabolized and absorbed through the skin. The amount of radioactivity in excreta shall be determined at selected time intervals that will enable the measurement of kinetic processes.

(ii) *Metabolism studies—Rats.* Groups A, B, C, D, E, and F shall be used to determine the metabolism of the test substance. Excreta (urine, feces, and expired air) shall be collected for identification and measurement of the

quantities of test substance and metabolites.

(4) *Measurements*—(i) *Pharmacokinetics.* Four animals from each group shall be used for these purposes.

(A) *Rat studies*—(*1*) *Bioavailability.* The levels of radioactivity shall be determined in whole blood, blood plasma or blood serum at 15 minutes, 30 minutes, 1 hour, 2 hours, 8 hours, 24 hours, and 96 hours after administration of the intravenous and dermal doses, and at the same intervals after the last inhalation exposure.

(*2*) *Extent of absorption.* The total quantities of radioactivity shall be determined for excreta collected daily for 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta.

(*3*) *Excretion.* The quantities of radioactivity eliminated in the urine, feces, and expired air shall be determined separately at time intervals that provide accurate measurement of clearance and excretory rates. The collection of carbon dioxide may be discontinued when less than one percent of the dose is found to be exhaled as radioactive carbon dioxide in 24 hours.

(*4*) *Tissue distribution.* At the termination of each study, the quantities of radioactivity shall be determined in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lungs, muscle, skin, spleen, and residual carcass of each animal.

(*5*) *Change in pharmacokinetics.* Results of pharmacokinetics measurements (i.e., biotransformation, extent of absorption, tissue distribution, and excretion) obtained in rats receiving the single low inhalation dose of the test substance (Group B) shall be compared to the corresponding results obtained in rats receiving repeated inhalation doses of the test substance (Group F).

(B) *Guinea pig studies—Extent of absorption.* The total quantities of radioactivity in excreta shall be determined daily for 7 days or until 90 percent of the radioactive dose has been excreted.

(ii) *Metabolism.* Four animals from each group shall be used for these purposes. (A) *Rat Studies*—(*1*) *Biotransformation.* Appropriate qualitative and quantitative methods shall be used to assay urine, feces, and expired air collected from rats. Efforts shall be made to identify any metabolite which comprises 5 percent or more of the dose eliminated.

(*2*) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methods shall be used to compare the composition of radioactive compounds in excreta from rats receiving single inhalation dose (Groups B and C) with rats receiving repeated inhalation doses (Group F).

(B) [Reserved]

(d) *Data and reporting.* The final test report shall include the following:

(1) *Preservation of results.* Numerical data shall be summarized in tabular form. Phamacokinetics data shall also be presented in graphical form. Qualitative observations shall also be reported.

(2) *Evaluation of results.* All data shall be evaluated by an appropriate statistical method.

(3) *Reporting results.* In addition to the reporting requirements as specified in 40 CFR Part 792, the following information shall be reported.

(i) Species and strains of laboratory animals.

(ii) Chemical characterization of the test substances, including: (A) For the radioactive test substances, information on the sites and degree of radiolabeling, including type of label, specific activity, chemical purity, and radiochemical purity.

(B) For the nonradioactive test substance, information on chemical purity.

(C) Results of chromatography.

(iii) A full description of the sensitivity, precision, and accuracy of all procedures used to obtain the data.

(iv) Percent and rate of absorption of the test substances after inhalation and dermal exposures to rats and dermal exposure to guinea pigs.

(v) Quantity and percent recovery of radioactivity in feces, urine, expired air, and blood. For dermal studies with rats and guinea pigs, include recovery data for skin, skin washings, and residual radioactivity in the recovering apparatus as well as results of the washing efficacy study.

(vi) Tissue distribution reported as quantity of radioactivity in blood, in various tissues including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lung, muscle, skin, and spleen and in residual carcass of rats.

(vii) Biotransformation pathways and quantities of the test substances and metabolites in excreta collected after administering single high and low doses to rats.

(viii) Biotransformation pathways and quantities of test substances and metabolites in excreta collected after administering repeated low doses to rats.

(ix) Pharmacokinetics models developed from the experimental data.

2. In Part 799:

a. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2063, 2611, 2625.

b. § 799.2155 by adding paragraph (c)(8) and by revising paragraph (d) to read as follows:

§ 799.2155 Commercial hexane.

* * * * *

(c) * * *

(8) *Pharmacokinetics*—(i) *Required testing.* Pharmacokinetics testing shall be conducted with the test substances specified in paragraph (a)(2) of this section and in § 795.232(c)(2)(i) of this chapter. Two separate tests will be run, one with the test substance labeled with ^{14}C *n*-hexane, and the other with the test substance labeled with ^{14}C methylcyclopentane, in accordance with § 795.232 of this chapter. In addition, the rat strain used shall be the same as the strain used in the other tests required under this section.

(ii) *Reporting requirements.* (A) The inhalation and dermal pharmacokinetics test shall be completed and the final report submitted to EPA within 18 months after [the effective date of the final rule specifying the pharmacokinetics test standard and reporting requirements for commercial hexane].

(B) Interim progress reports shall be submitted to EPA for the inhalation and dermal pharmacokinetics test at 6-months intervals, beginning 6 months after the effective date of the final test rule specifying the pharmacokinetics test standard for commercial hexane, until the final report is submitted to EPA.

(d) *Effective date.* (1) Section 799.2155 is effective on November 17, 1988 except for paragraph (c)(8) which is effective [44 days after publication of the final rule incorporating this amendment].

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the respective paragraphs of this section.

[FR Doc. 88-25929 Filed 11-8-88; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[GSAR Notice No. 5-268]

General Services Administration Acquisition Regulation; Economic Price Adjustment Clause for Multiple Award Schedule Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise Alternate I of the clause entitled "Economic Price Adjustment-FSS Multiple Award Schedule Contracts" at GSAR 552.216–71 to provide for price adjustments in multiyear contracts that are for periods of more than 3 years. This change is proposed as a result of the recent policy decision by the Federal Supply Service permitting the award of Multiple Award Schedule (MAS) contracts for periods of up to 5 years. The intended effect is to provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing on or before December 9, 1988.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this proposed rule.

The GSA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would simply modify th existing Economic Price Adjustment clause used in multiyear Multiple Award Schedule contracts to make the language more general so that it will apply to multiyear contracts of varying terms. The existing clause is written in contemplation of a 3 year contract period.

The Economic Price Adjustment Clause at GSAR 552.216–71 contains an information collection requirement which was previously submitted to the OMB for review under section 3504(h) of the Paperwork Reduction Act. This proposed revision has also been submitted to OMB for approval. Comments on the information collection requirements in GSAR 552.216–71 may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the collection is "48 CFR 552.216–71, Economic Price Adjustment Clause." The clause requires MAS contractors submission of certain pricing information when requesting a price adjustment under an MAS contract. The contracting officer uses the information to determine whether the requested price adjustment is reasonable. The respondents are MAS contractors requesting price adjustment under MAS contracts that contain the Economic Price Adjustment clause. The estimated total annual burden for this collection is 2,186 hours. This is based on estimated average burden hours per response of .5, a proposed frequency of 1.5 responses per respondent, and an estimated number of likely respondents of 2,914.

List of Subjects in 48 CFR Part 552

Government procurement.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

Subpart 552.2—Test of Provisions and Clauses

2. Section 552.216–71 is amended to change the date that follows Alternate I, to revise paragraph (c) of the Alternate clause, and to revise the text that follows the asterisk at the end of the clause to read as follows:

§ 552.216–71 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

* * * * *

Alternate I (October 1988)

* * * * *

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed —*—percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change."

(End of Clause)

*Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the contracting director.

Dated: October 21, 1988.

Ida M. Ustad,

Director, Office of GAS Acquisition Policy and Regulations.

[FR Doc. 88–25885 Filed 11–8–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Parts 932 and 952

Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Proposed rule.

SUMMARY: This proposed rule, when issued as a final rule, will amend the Department of Energy Acquisition Regulation (DEAR), by deleting the DOE unique prompt payment policies, procedures and contract clauses established in the DEAR to implement the requirements of the Prompt Payment Act (Pub. L. 97–177) and require the use of new prompt payment policies, procedures and contract clauses recently established, on a Federal-wide basis, in the Federal Acquisition Regulation (FAR). .

DATE: Written comments must be submitted no later than (December 9, 1988.

ADDRESS: Comments must be addressed to: Rudolph J. Schuhbauer, U.S. Department of Energy, Business and Financial Policy Division (MA–422), 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Business and Financial Policy Division (MS–422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586–8175.

Paul A. Gervas, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Washington, DC 20585, (202) 586–6906.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rule is to revise the DEAR, as necessary, to implement the requirements of the Prompt Payment Act as implemented by Office of Management and Budget (OMB) Circular A–125, Prompt Payment, and FAR Subpart 32.9, Prompt Payment.

A brief description of DEAR amendments follows:

DEAR Section 932.111, Contract Clauses, is deleted in its entirety.

DEAR Subpart 932.71, Contract Payments, is deleted in its entirety.

DEAR Subpart 932.9, Prompt Payment, is added as a new Subpart in order to establish certain DOE specific policies and procedures required to implement the prompt payment provisions specified in FAR Subpart 32.9.

Under Part 952, Solicitation Provisions and Contract Clauses, Section 952.232, including Subsections 952.232–1 through 952.232–8, 952.232–10, and 952.232–70 through 952.232–73, is deleted in its entirety.

II. Procedural Requirements

A. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Parts 932 and 952

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on September 14, 1988.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 932—CONTRACT FINANCING

1. The authority citation for Parts 932 and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

932.111 [Removed]

2. Section 932.111 is removed in its entirety.

Subpart 932.71—[Removed]

3. Subpart 932.71, consisting of sections 932.7100, 932.7101, 932.7102, 932.7103, 932.7104, 932.7105, 932.7106, and 932.7107 and subsections 932.7107–1 and 932.7107–2, is removed in its entirety.

4. Part 932 is amended by adding new Subpart 932.9, Prompt Payment, consisting of sections 932.908 and 932.970, as follows:

Subpart 932.9—Prompt Payment

Subpart 932.9—Prompt Payment

932.908 Contract Clause.

(c) The contracting officer shall incorporate paragraph (c), *Electronic Funds Transfer*, promulgated as Alternate II at FAR 52.232–25, in solicitations and contracts containing the basic Prompt Payment clause or its Alternate I as prescribed at FAR 32.908(a) and FAR 32.908(b), respectively.

932.970 Implementing DOE Policies and Procedures.

(a) *Invoice payments*—(1) *Contract settlement date.* For purposes of determining payment due dates on a final invoice pursuant to paragraph (a)(2)(ii) of the basic Prompt Payment clause and (a)(2)(i)(B) of its Alternate I at FAR 52.232–25, contract settlement occurs when the contracting officer determines that the contractor has complied with all contract terms and conditions, including all administrative requirements (e.g., execution and delivery of contractor's release of claims, execution of understandings setting forth final indirect costs rates, establishment of final contract price). In addition, for purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to closeout the contract.

(2) *Constructive acceptance periods.* It is expected that, in the majority of cases, Government acceptance or approval can occur within the standard constructive acceptance or approval periods specified in paragraphs (a)(6)(i) of the basic Prompt Payment clause and

(a)(5)(i) of its Alternate I at FAR 52.232–25. However, the contracting officer should coordinate these provisions with the DOE official(s) that will be responsible for performing the acceptance and/or approval function(s). Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract financing payments.* (1) The standard payment due date to be specified by the contracing officer in paragraphs (b)(2) of the basic Prompt Payment clause and its Alternate I at FAR 52.232–25 shall normally be 30 days for progress payments and 30 days for interim payments on cost-type contracts.

(2) Contracting officers may specify payment due dates that are less than the standard when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 952.232—[Removed]

5. Subpart 952.232, consisting of subsections 952.232–1, 952.232–2, 952.232–3, 952.232–4, 952.232–5, 952.232–6, 952.232–7, 952.232–8, 952.232–10, 952.232–70, 952.232–71, 952.232–72 and 952.232–73, is removed in its entirety.

[FR Doc. 88–25889 Filed 11–8–88; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Zones In Which Lead Shot Will Be Prohibited For The Taking of Waterfowl, Coots and Certain Other Species In The 1989–90 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The use of lead shot in waterfowl Hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this proposed rule describes the zones in which the use of lead shot would be prohibited for hunting waterfowl, coots and certain other species in the 1989–90 season. The zones described consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1988–89 hunting season, (2) the added counties identified for 1989–90 in Appendix N of the Final Supplemental Environmental Impact Statement (SEIS) on the Use of Land Shot for Hunting Migratory Birds in the United States (see Table 1 in Supplementary Information) and (3) those additional areas indentified by the States where acceleration of the nontoxic shot phase-in schedule is considered appropriate because of potential administrative, enforcement and/or lead poisoning problems. States that have declared a statewide ban on the use of lead shot waterfowl and coot hunting are so noted.

DATE: Comments on this proposal will be accepted until December 9, 1988.

ADDRESS: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Buidling, Washigton, DC 20240 (202/254–3207).

SUPPLEMENTARY INFORMATION: This rule implements the third year (1989–90) of the 5-year component of the strategy to phase-in a nontoxic shot requirement for waterfowl hunting nationwide by 1991–92, as set out by the preferred alternative of the Final SEIS on the Use of Lead Shot for Hunting Migratory Birds in the United States published in June 1986 (FES 86–16). The SEIS and consequent rulemaking imposing nontoxic shot requirements results from the Secretary of Interior's responsiblities under the Migratory Bird Treaty Act (MBTA), as amended (16 U.S.C. 703 *et seq.;* 40 Stat. 755), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will allowed. A critical element in the Department of the Interior's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis of concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987–88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for the proposed rule was published in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_3), the June 27, 1986, proposed rule and in the Record of Decision confirming the preferred alternative and published in the **Federal Register** on August 20, 1986 (51 FR 29673). Additional information relating to the imposition of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rule for the 1987–88 and 1988–89 waterfowl hunting seasons published in the **Federal Register** on Tuesday, July 21, 1987 (52 FR 27352) and on Tuesday, June 28, 1988 (53 FR 24284), respectively.

Counties scheduled to convert in their entireties to nontoxic shot in the 1989–90 waterfowl season are those counties having had an average annual waterfowl harvest of 10 or more per square mile over the 10-year period 1971–80. As scheduled, aproxmately 79 percent of the waterfowl harvest nationwide will occur in nontoxic shot zones in the 1988–89 waterfowl hunting season. However, the conversion of many entire States ahead of the schedule is estimate to increase the percentage of the total waterfowl

harvest occurring in nontoxic shot zones to be about 90 percent in this 1989–90 waterfowl hunting season.

In summary, this rule proposes to amend § 20.108 of 50 CFR to add areas to expand existing nontoxic shot zones for the 1989–90 waterfowl hunting season.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or signficant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprieses. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Excutive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The FWS believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a recent section 7 opinion concludes that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Table 1—Counties proposed to be added in 1989–90 to the existing zones where the hunting of waterfowl, coot and certain other species is limited to the use of nontoxic shot.[1]

State And County

ALABAMA

Jackson
Madison

ARKANSAS

Crawford
Green
Jackson
Mississippi
Randolph
Sevier
St. Francis
White
Yell

CALIFORNIA

Fresno
Napa
Santa Clara
Siskiyou

FLORIDA

St. Johns

GEORGIA

Dougherty
McIntosh

IDAHO

Bannock

ILLINOIS

Franklin
Peoria
Pike
Rock Island

INDIANA

All lands and waters of all counties of the State.

KANSAS

Cherokee
Crawford
Pratt
Reno

KENTUCKY

Caldwell
Hopkins
Lyon
Union

LOUISIANA

Bienville
Catahoula
Concordia
Franklin
Grant
Sabine
St. Landry
St. Martin
Union

MARYLAND

Anne Arundel
Calvert
Harford
St. Marys
Wicomico

MICHIGAN

All lands and water of all counties of the State.

NEW HAMPSHIRE

Rockingham
Strafford

NEW JERSEY

Burlington
Gloucester
Mercer

NORTH CAROLINA

New Hanover

NORTH DAKOTA

Benson
Dickey
Kidder
McLean
Renville
Richland
Steele
Stutsman
Ward

OHIO

Summit

OKLAHOMA

Comanche
Johnston
McIntosh
Marshall
Muskogee
Sequoyah
Wagoner

OREGON

Benton
Clatsop
Tillamook

SOUTH CAROLINA

All lands and waters of all counties of the State.

TENNESSEE

Crockett
Franklin
Lauderdale
Meigs
Stewart

[1] Counties listed are taken from the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States, Appendix N. Counties listed are those that have 10 or more waterfowl harvested per square mile, as referenced by Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service, Spec. Sci. Rpt.—Wildl. No. 254, Washington, DC). "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bag limits and concurrent seasons. Differences between this Table and the Appendix N schedule reflect changes initiated by the States to accelerate county nontoxic shot conversions.

TEXAS

Baylor
Brazos
Comanche
Grayson
Hopkins
Marion
Trinity
Willacy

UTAH

Box Elder

VIRGINIA

King Willam
Mathews
Middlesex
Northumberland
Westmoreland

WASHINGTON

Snohomish

Authorship

The primary author of this proposed rule in Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 would continue to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 20.108 would be revised to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

Atlantic Flyway

Connecticut

All lands and waters within the State of Connecticut have been designated for nontoxic shot use.

Delaware

1. Kent and New Castle Counties.
2. All State and/or Federally owned property within the following areas of Sussex County:

A. Assawoman, Gordon's Pond and Prime Hook State Wildlife Areas.

B. Cape Henlopen and Delaware Seashores State Parks.

C. Prime Hook National Wildlife Refuge.

Florida

1. Brevard, Broward, Citrus, Collier, Dade, Leon, Osceola, Polk, St. Johns and Volusia Counties.
2. Those portions of Gadsden and Liberty Counties, adjacent to Leon County, that include the floodplains of Lake Talquin and the Ochlockonee River.
3. That portion of Lake Miccosukee in Jefferson County.
4. Orange Lake and Lochloosa Lake in Alachua County.
5. The area lying lakeward of and bounded by the Lake Okeechobee levee, by the State Road 78, Kissimmee River bridge, and by State Road 78 from its intersection with the Lake Okeechobee levee at points near Lakeport and the Old Sportsman's Village site.
6. That portion of Glades County outside of the area described in No. 5 above.
7. Occidental Wildlife Management Area, as well as all of the Occidental Chemical Company phosphate pits east of US 41, south of State Road 6, west of State Road 135 and north of White Springs, all in Township 1 north, Ranges 15 and 16 east in Hamilton County comprising approximately 35,000 acres.
8. That area formerly known as the M–K Ranch public waterfowl are in Gulf County.
9. Hickory Mound Impoundment within the Aucilla Wildlife Management Area in Taylor County.
10. That portion of Everglades Conservation Area 2 in Palm Beach County.
11. That portion of Lake George lying in Putnam County.
12. That portion of the St. Johns River floodplain lying in Lake, Seminole and Orange Counties.
13. That portion of Lake Rousseau lying in Levy and Marion Counties.
14. Lake Harbor public waterfowl hunting area in Palm Beach County.
15. Chassahowitzka Wildlife Management Area in Hernando County, and the State waters of the Gulf of Mexico in Hernando County north of Raccoon Point designated by posted signs.
16. Chassahowitzka, Lower Suwannee, Merritt Island and Loxahatchee National Wildlife Refuges.

Georgia

1. Dougherty and McIntosh Counties.
2. Eufaula and Savannah National Wildlife Refuges.

Maine

All lands and waters within the State of Maine have been designated for nontoxic shot use.

Maryland

1. Ann Arundel, Calvert, Cecil, Dorchester, Harford, Kent, Queen Annes, Somerset, St. Marys, Talbot, Wicomico and Worcester Counties.

Massachusetts

All lands and waters within the State of Massachusetts have been designated for nontoxic shot use.

New Hampshire

1. Rockingham and Stafford Counties.

New Jersey

1. Atlantic, Burlington, Cape May, Cumberland, Gloucester, Hudson, Mercer, Middlesex, Monmouth, Ocean and Salem Counties, and any adjacent State-owned tidal waters.

New York

All lands and waters within the State of New York have been designated for nontoxic shot use.

North Carolina

1. Beaufort, Currituck, New Hanover, Pamlico and Washington Counties.
2. Cape Hatteras National Seashore Recreation Area.
3. Cedar Island, Mattamuskeet and Swanquarter National Wildlife Refuges.

Pennsylvania

All lands and waters within the State of Pennsylvania have been designated for nontoxic shot use.

Rhode Island

All lands and waters within the State of Rhode Island have been designated for nontoxic shot use.

South Carolina

All lands and waters within the State of South Carolina have been designated for nontoxic shot use.

Vermont

1. Franklin and Grand Isle Counties.
2. Missisquoi National Wildlife Refuge.

Virginia

1. Counties of Accomack, Charles City, Gloucester, James City, King William, Mathews, Middlesex, New Kent, Northumberland, Westmoreland and York.
2. Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson Portsmouth, Suffolk, Virginia Beach and Williamsburg.

Mississippi Flyway

Alabama

1. Jackson, Limestone and Madison Counties.
2. Eufaula National Wildlife Refuge.

Arkansas

1. Arkansas, Ashley, Clay, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Green, Jackson, Jefferson, LaFayette, Lawrence, Lincoln, Little River, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, Woodruff and Yell Counties.
2. Lake Dardanelle and Millwood Lake Wildlife Management Areas.
3. Felsenthal National Wildlife Refuge.

Illinois

1. Mississippi River and adjacent areas in the following counties BORDERED BY the roads and/or lines indicated as follows: All of Alexander, Calhound, Carroll, Henderson, Jackson, Jersey, Pike, Rock Island and Union Counties; Adams County—IL–96 (Lima), County Hwy–41, County Hwy–7, County Hwy–8 and Lock and Dam 20. (The Mark Twain NWR, Bear Creek Unit is also a nontoxic shot zone); Hancock County—(Dallas City), IL–9/96, IL–96/US 136 and IL–96; Henry County—I–80 and I–74/280; Jo Daviess County—IL–35 (East Dubuque), US 20, IL–84/US 20 and IL–84; Mercer County—Railroad bridge (Keithsburg), County Hwy–16

and County Hwy–25; and Whiteside County—IL–84 (north), IL–136/Fulton Road, County Hwy–21/Frog Pond Road, Garden Plain Road, County Hwy–21/Sand Road and IL–5.

2. Illinois River and adjacent areas in the following counties BORDERED BY the roads and/or lines indicated as follows: All of Calhoun, Cass, Fulton, Jersey, Marshall, Mason, Peoria, Pike, Putnam and Woodford Counties; Brown County—County Hwy–3/FAS–582, FAS–582, County Hwy–12 and IL–99; Bureau County—IL–89 (Spring Valley), IL–6/89, IL–29, and IL–26/29 and IL–29; Greene County—Kampsville Ferry route, IL–108 and FAP–155 (south); Morgan County—IL–104 (Meredosia) and IL–100/US 67; Schuyler County—IL–100 (Bluff City), IL–103 and County Hwy–9; and Tazewell County—IL–26, IL–116, IL–116/US 150, IL–8/116, IL–29, IL–9/29, IL–29, FAS–461 and County Hwy–16.

3. Southern Goose Quota Zone: All of Alexander, Jackson, Union and Williamson Counties.

4. Rend Lake Goose Quota Zone: All of Franklin and Jefferson Counties.

5. Other Areas: All of Bond, Clinton, Fayette, Kane, Lake and McHenry Counites.

Indiana

All lands and waters within the State of Indiana have been designated for nontoxic shot use.

Iowa

All lands and waters within the State of Iowa have been designated for nontoxic shot use.

Kentucky

1. Western Zone. That area of western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate 24-Purchase Parkway junction; northeast on I–24 to Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 641 to US 60 at Marion, north on US 60 to the Union County line; northeast and north along the Union County line to the Union County line-US 60 junction; north on US 60 to the US 60-US 41 juntion; and north on US 41 to the Indiana-Kentucky border near Henderson, Kentucky.

Louisiana

1. Acadia, Assumption, Avoyelles, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Concordia, Evangeline, Franklin, Grant, Iberia, Jefferson, Jefferson Davis, LaFourche, LsSalle, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Rapides, Red River, Sabine, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Terrebonne, Union and Vermilion Parishes.

Michigan

All lands and waters within the State of Michigan have been designated for nontoxic shot use.

Minnesota

All lands and waters within the State of Minnesota have been designated for nontoxic shot use.

Mississippi

All lands and waters within the State of Mississippi have been designated for nontoxic shot use.

Missouri

All lands and waters within the State of Missouri have been designated for nontoxic shot use.

Ohio

1. Ashtabula, Cuyahoga, Erie, Holmes, Lake, Lorain, Lucas, Ottawa, Sandusky, Summit, Trumbull, Wayne and Wood Counties.

Tennessee

1. Benton, Crockett, Dyer, Franklin, Jefferson, Lake, Lauderdale, Meigs, Obion, Shelby, Stewart and Tipton Counties.

Wisconsin

All lands and waters within the State of Wisconsin have been designated for nontoxic shot use.

Central Flyway

Colorado

1. Alamosa, Boulder, Conejos, Costilla, Morgan, Rio Grande and Weld Counties.

2. Hinsdale, Mineral and Saguache Counties east of the Continental Divide.

3. Turk's Pond portion of Baca County.

Kansas

1. Barton, Cherokee, Coffey, Cowley, Crawford, Doniphan, Ellsworth, Jefferson, Linn, Mitchell, Mongomery, Neosho, Pratt, Reno and Stafford Counties.

2. All areas administered by the Kansas Department of Wildlife and Parks, U.S. Army Corps of Engineers and U.S. Bureau of Reclamation, including those within the boundaries of the above Counties.

3. Kirwin Reservoir.

4. Kirwin and Quivira National Wildlife Refuges.

Montana

All land and waters within the State of Montana have been designated for nontoxic shot use.

Nebraska

All lands and waters within the State of Nebraska have been designated for nontoxic shot use.

New Mexico

All lands and waters within the State of New Mexico have been designated for nontoxic shot use.

North Dakota

1. Bensen, Bottineau, Dickey, Griggs, Kidder, McIntosh, McLean, Nelson, Ramsey, Renville, Richmond, Sargent, Steele, Stutsman, Towner and Ward Counties.

Oklahoma

1. Comanche and Nowata Counties.

2. The area described within the roads and/or lines as follows: US 77 from the Kansas border south to US 177; US 177 south to State Highway 15; State Highway 15 east to State Highway 18; State Highway 18 south to US 64; US 64 east to State Highway 99; State Highway 99 south to State Highway 51; State Highway 51 east to State Highway 97; State Highway 97 north to its junction with unnamed county roadway; northwestward on the county roadway to its junction with State Highway 20; State Highway 20 west to State Highway 18; and State Highway 18 north to the Kansas border.

3. The area described within the roads and/or lines as follows: The Sequoyah County line west to the Muskogee County line from the Arkansas-Oklahoma State line; north and west on the Muskogee County line to State Highway 80; north on State Highway 80 to State Highway 251A; west on State Highway 251A to the Wagoner County line; (generally) north, west and south on the Wagoner, Muskogee and McIntosh County lines to US 266; west on US 266 to US 62; south on US 62 to Indian Nation Turnpike; south on Indian Nation Turnpike to the McIntosh County line; west, south and east along the McIntosh County line to the Indian Nation Turnpike; south on Indian Nation Turnpike to US 270; US 270 east to State Highway 2; State Highway 2 north to State Highway 31; State Highway 31 west to State Highway 71; State Highway 71 north to State Highway 9; State Highway 9 to State Highway 9A; and State Highway 9A north and east to the Arkansas border.

4. The area described within the roads and/or lines as follows: State Highway 78 from the Texas border north and west to US 75; US 75 north to State Highway 78; State Highway 78 northwest to the Johnston County line; [generally] north, west and south on the Johnston and Marshall County lines to State Highway 32 near Lebanon; south and west on State Highway 32 to the junction of IH–35 near Marietta; and south down IH–35 to the Texas border.

5. That portion of Oologah Reservoir and all adjoining public lands in Rogers County.

6. Fort Cobb Reservoir and all adjoining public lands in Caddo County.

7. Hajek Marsh.

8. Those areas of land and water encompassing the controlled water level impoundments (WATERFOWL STAMP HUNTING AREAS) within the following State Wildlife Management Areas:

A. Waurika
B. Hulah
C. Wister
D. Okmulgee
E. Copan
F. Hugo
G. Mt. Park
H. Deep Fork
I. Lake Ellsworth

9. Salt Plains and Washita National Wildlife Refuges.

South Dakota

All lands and waters within the State of South Dakota have been designated for nontoxic shot use.

Texas

1. Baylor, Brazos, Comanche, Hopkins and Trinity Counties.

2. The area described within the roads and/or lines as follows: Beginning at the Louisiana State line; west along IH–10 to the Jefferson County line; north of IH–10 along the Jefferson County line to its junction with the Liberty County line; west, north, southwest and southeast along the Liberty County line to its junction with the Harris County line; (generally) west along the Harris County line to its junction with the Waller County line; (generally) north, west and south along the Harris County line to its intersection with State Highway 159; southwest along State Highway 159 to its intersection with the Colorado County line; northwest and southwest along the Colorado County line to its junction with IH–10 near Schulenberg; west along IH–10 to its junction with US 77 at Shulenberg; south and southwest along US 77 to its junction with the (north) Nueces County line at the Nueces River; (generally) northwest and south along the Neuces County line to its junction with US 77 near Kingsville; south on US 77 to its junction with the (north) Willacy County line; (generally) west, south and east on the (south) Willacy County line to its junction with US 77; south along US 77 to its junction with the US-Mexico international boundary at Brownsville; east along the US-Mexico international boundary to the Gulf of Mexico; east and seaward to the three marine league limit; northeast along the three marine league limit to the Louisiana State line; and north along the Texas-Louisiana State line to its junction with IH–10.

3. The area described within the roads and/or lines as follows: Beginning at the Oklahoma State line; south along I–35 to its junction with US 82 at Gainesville; east along US 82 to its junction of the Grayson County line; south, east and north to the junction of the Grayson County line and US 82; east along US 82 to its junction with State Highway 78 at Bonham; north along State Highway 78 to its junction with the Oklahoma State line; and west along the Oklahoma-Texas State line to its junction with I–35.

4. The area described within the roads and/or lines as follows: Beginning at the Louisiana State line; west along the (north) Marion County line to its junction with State Highway 49 near Avinger; northwest on State Highway 49 to its junction with US 259 at Daingerfield; south along US 259 to its junction with State Highway 450 at Ore City; east on State Highway 450 to its junction with State Highway 154 at Harleton; southeast along State Highway 154 to its junction with US 80 at Marshall; east along US 80 to its junction with State Highway 43; northeast along State Highway 43 to its junction with FM 2682 at Karnack; east along FM 2682 to its junction with FM 134; south along FM 134 to its junction with FM 1999 at Leigh; east along FM 1999 to its junction with the Louisiana State line; and north along the Louisiana-Texas border to its junction with State Highway 49.

5. The area described within the roads and/or lines as follows: Beginning at the junction of State Highway 31 and FM 2661; west along State Highway 31 to its junction with US 175 at Athens; northwest along US 175 to its junction with FM 90; north along FM 90 to its junction with FM 1391; west along FM 1391 to its junction with US 175 at Kemp; south along US 175 to its junction with State Highway 274; south along State Highway 274 to its junction with State Highway 31 at Trinidad; east along State Highway 31 to its junction with FM 3441 at Malakoff; south along FM 3441 to its junction with FM 59 at Cross Roads; south along FM 59 to its junction with US 287 at Cayuga; southeast along US 287 to its junction with FM 860; north along FM 860 to its junction with FM 837; northeast along FM 837 to its junction with US 175 at Frankston; east along US 175 to its junction with FM 855; north along FM 855 to its junction with FM 346; north along FM 346 to its junction with FM 344; north along FM 344 to its junction with FM 2661; and north along FM 2661 to its junction with State Highway 31.

Wyoming

1. Big Horn County: Along and within one mile either side of the waterline of the Big Horn River, Yellowtail Reservoir, Shoshone River, Nowood River and portions of Medicine Lodge Creek and Paintrock Creek where they flow into the Nowood River, beginning from their confluence to where they flow from the mountains.

2. Goshen County:

A. North Platte River/Laramie River—Beginning where US 25 crosses the Wyoming-Nebraska State line; south along said State line to Goshen County Road No. 7–108; west along said road to Wyoming Highway 92, west, then north along said highway to US 85; north along said highway to Wyoming Highway 156; west and north along said highway to Goshen County Road No. 7–62; west along said road to the Fort Laramie Canal Road; northwest along said road to Goshen County Road No. 7–48; southwest along said road to the Goshen-Platte County line; north along said line to US 26; and southeast along said highway to the point of beginning.

B. Table Mountain—Beginning where Wyoming Highway 92 intersects Wyoming Highway 158; south along said highway to Goshen County Road No. 7–171; west along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–160; east along said road to Goshen County Road No. 7–166; North along said road to Goshen County Road No. 7–114, east along said road to Wyoming Highway 92; and east along said highway to the point of beginning.

Pacific Flyway

Arizona

1. Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary and Mormon Lake.

2. Hopi Indian Reservation lands in Coconino and Navajo Counties.

3. Navajo Indian Reservation lands in Apache, Coconino and Navajo Counties.

4. Cibola National Wildlife Refuge.

California

1. Alameda, Butte, Colusa, Contra, Costa, Fresno, Glenn, Imperial, Marin, Merced, Napa, Sacramento, San Joaquin, Santa Clara, Solano, Stanislaus, Sutter, Yolo and Yuba Counties.

2. Northeastern Zone. Those portions of Plumas, Shasta, Sierra, Siskiyou and Tahama Counties, and all of Lassen and Modoc Counties, bunded by the following line: Beginning at I–5 at the Oregon border, south on 1–5 to State Highway 89, and southeast on State Highway 89 to State Highway 70, and east on State Highway 70 to US 395, and south on U.S. 395 to the Nevada border.

3. Siskiyou County west of I–5.

Colorado

1. Montrose County.

Idaho

1. Panhandle Zone. All of Benewah, Bonner, Boundary and Kootenai Counties.

2. Southwestern Zone. Canyon and Payette Counies north and east of I–84, and those portions of Ada, Conyon, Elmore, Owyhee and Payette Counties within the following boundary; Beginning at the interesection of I–84 Business Highway junction at Cold Springs Creek east of Hammett, then northwest on I–84 to the Idaho-Orgeon State line, then south along the Idaho-Oregon State line to State Highway 19, then east on State Highway 19 to US 95 near Homedale, the southand east on US 95 to State Highway 55 west of Marsing, then east on State Highway 55 to State Highway 78 at Marsing, then southeast on State Highway 78 to I–84 Business Highway at Hammett, then east on I–84 Busines Highway to I–84 at Cold Springs Creek, the point of beginning.

3. South Central Zone. All of Gooding County, and that portion of twin Falls County that is west of the Gooding County-Jerome County-Twin Falls County junction and within 600 feet of the high water line of the Snake River.

4. Southeastern Zone.

A. All lands within the Fort Hall Indian Reservation boundary;

B. All of Jefferson County; and that portion of Bannock County not included in the bounderies described in C. Below; and

C. Those portions of Bannock, Bingham, Bonneville, Caribou, Cassia, Madison and Power Counties within the following boundary: Beginning at the Interstate 15-Jefferson County intersection (north of Idaho Falls), then south and southwest on I–15 to State Highway 39 near Blackfoot, then southwest on State Highway 39 to the road to the Idaho Department of Fish and Game's American Falls Fish Hatchery (approximately one-quarter mile west of American Falls Dam), then south on the hatchery road to the Union Pacific Railroad tracks, then southwest on the Union Pacific Railroad tracks to the Blaine County line, then south on the Blaine County line to its juction with the Cassia County line, then west on the Cassia County line to the Snake River-Raft River confluence, then upstream on the Raft River to I–86, then northeast on I–86 to I–15, then north on I–15 to US 91 (Old Yellowstone Highway) near Blackfoot, then northeast on US 91 to its junction with State Highway 26 approximately five miles northeast Shelly, then northeast on US 26 to the spot directly above the Heise measuring cable (about 1.5

miles upstream from Heise Hot Springs), then north across the South Fork of the Snake River to the Heise-Archer-Lyman Road (Snake River Road), then northwest on the Heise-Archer-Lyman Road to US 191/20, then north on US 191/20 to the US 191/20-Jefferson County line, and then west on the southern boundary of Jefferson County to the point of beginning.

Montana

All lands and waters within the State of Montana have been designated for nontoxic shot use.

Nevada

1. Canvasback Gun Club in Churchill County.
2. Carson Lake (Greenhead Hunting Club) in Churchill County.
3. Humboldt Wildlife Management Area in Churchill and Pershing Counties.
4. Key Pittman Wildlife Management Area in Lincoln County.
5. Mason Valley Wildlife Management Area in Lyon County.
6. Overton Wildlife Management Area in Clark County.
7. Stillwater Wildlife Management Area in Churchill County.
8. Ruby Lake National Wildlife Refuge in White Pine and Elko Counties and Pahranagat National Wildlife Refuge in Lincoln County.

New Mexcico

All lands and waters within the State of New Mexico have been designated for nontoxic shot use.

Oregon

1. Benton, Marion, Polk, Tillamook, Washington and Yamhill Counties.
2. Columbia and Clatsop Counties, those portions south and west of US 30 that are not included in the Lower Columbia River Zone.
3. Multnomah County, that portion south of I–84.
4. Southcentral Zone—All of Klamath County, excluding Davis Lake, and that portion of Lake County lying west of Highway 395.
5. Lower Columbia River Zone—Those portions of Multnomah, Columbia and Clatsop Counties bounded by the following line: Beginning at the Bonneville Dam, west on Highway I–84 to Portland, northwest on US 30 to the Astoria bridge, partially across Astoria bridge to the Oregon-Washington State line, and upriver on the Washington-Oregon State line to point of origin.
6. Malheur County Zone—That portion of Malheur County bounded by a line beginning at I–84 at the Oregon-Idaho State line, northwest on I–84 to State Highway 201, south on State Highway 201 to State Highway 19, east on State Highway 19 to the Oregon-Idaho State line and back to the point of origin.
7. Columbia Basin Zone—Those portions of Gilliam, Morrow and Umatilla Counties bounded by the following line: Beginning at the town of Arlington on I–84, east on I–84 to US 730, northeast on US 730 to the Oregon-Washington State border, and west along the Columbia River, Oregon-Washington border to point of origin.

Utah

1. Box Elder, Cache, Davis, Salt Lake, Utah and Weber Counties.
2. Navajo Indian Reservation lands in San Juan County.

Washington

1. All of Walla Walla County; those portions of Clallam, Snohomish and Thurston Counties not included in the Puget Sound Zone; and that portion of Pacific County not included in the Southwestern Zone.
2. Clark County, that portion north and/or east of State Highway 14 and I–5.
3. Franklin County, that portion east of State Highway 17.
4. Grant County, that portion east and/or south of State Highway 17 and US 2.
5. Skagit County, that portion east of I–5.
6. Southwestern Zone—Those portions of Skamania, Clark, Cowlitz, Wahkiakum, Grays Harbor and Pacific Counties south and west of the following line: Beginning at the Bonneville Dam, west on State Highway 14 to Vancouver, north on I–5 to Kelso, west on State Highway 4 to US 101, north on US 101 to Aberdeen, west on State Highway 109 to Ocean City, and due west to the Pacific Ocean.
7. Puget Sound Zone—Those portions of Whatcom, Skagit, San Juan, Island, Clallam, Jefferson, Kitsap, Mason, Thurston, Pierce, King and Snohomish Counties bounded by the following line: Beginning at I–5 on the Washington-British Columbia, Canada border, west, south and west along said border to a point due north of Neah Bay, due south to Neah Bay, east on State Highway 112 to US 101, east and south on US 101 to I–5, north on I–5 to State Highway 538 near Mt. Vernon, east on State Highway 538 to State Highway 9, north on State Highway 9 to State Highway 20, west on State Highway 20 to I–5, and north on I–5 to point of origin.
8. Columbia Basin Zone—Those portions of Benton, Klickitat, Franklin, Adams, Grant, Yakima, Chelan, Kittitas, Douglas, Lincoln, Okanogan and Walla Walla Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo 1 ridge on US 97, north on US 97 to State Highway 14, east on State Highway 14 to US 395/I–82, north on US 395/I–82 (formerly a continuation of State Highway 14) to Kennewick, west on State Highway 240, north on State Highway 240 to State Highway 24, west on State Highway 24 to US 97, north on US 97 to State Highway 155 at Omak, east and south on State Highway 155 to State Highway 174 at Grand Coulee, southeast on State Highway 174 to US 2, west on US 2 to State Highway 17, south on State Highway 17 to US 395, south on US 395 to US 12, south on US 12 and US 730 to the Oregon border (including the entire McNary National Wildlife Refuge), and west along the Columbia River and the Washington-Oregon border to the point of origin.

Date: October 20, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–25852 Filed 11–8–88; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 81128–8228]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This proposed Amendment 2 (Amendment) will improve the overall effectiveness of existing management measures and enhance conservation of the groundfish stocks. The intended effect of the rule is to maintain the abundance and viability of the groundfish stocks to support both commercial and recreational fisheries .

DATE: Comments on the proposed rule must be received on or before December 19, 1988.

ADDRESSES: Send comments on the proposed rule and Amendment to Richard Roe, Regional Director, NMFS, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930–3799. Mark the outside of the envelope "Comments on Multispecies Amendment 2."

Copies of the Amendment, the environmental assessment (EA), the regulatory impact review (RIR), and other supporting documents are available from Douglas Marshall, Executive Director, New England Fishery and Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01908.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst), 508–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: Pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801, *et seq.*, the Secretary of Commerce (Secretary), in consultation with regional fishery management councils, is authorized to take such measures as are necessary to conserve and manage the fishery resources within the U.S. exclusive economic zone (EEZ). Under the Magnuson Act, regional fishery management councils develop fishery management plans for specific fisheries within a geographic region. If approved by the Secretary, the plans are then implemented through Federal regulations.

The multispecies (groundfish) fishery is an important and traditional fishery in the New England region. Species harvested in that fishery include cod, haddock, yellowtail flounder, pollock, redfish, white hake, and four other flounders. In recent years, the fishery had been severely exploited and needed effective management and conservation measures. In March 1986, the New England Fishery Management Council (Council) submitted for approval the FMP, which established new conservation measures for the New England groundfish fishery. NMFS concluded that the FMP failed to provide an adequate program to manage the fishery, but that it was a step in the right direction. Based on that evaluation, the Secretary approved the FMP and its implementing regulations for the interim period of September 19, 1986, to September 30, 1987 (51 FR 29642, August 20, 1986).

In May 1987, the Council submitted for Secretarial approval Amendment 1, which would amend and extend the FMP. Amendment 1 was designed to improve and strengthen the conservation measures of the FMP by addressing deficiencies that were identified by the Secretary in his decision to conditionally approve the FMP. The Secretary approved Amendment 1 and its implementing regulations effective October 1, 1987 (52 FR 35093, September 17, 1987).

The Council has prepared and submitted Amendment 2 to amend the FMP. A notice of availability was published on October 11, 1988 (53 FR 39627). Amendment 2 contains proposed actions that are expected to improve the effectiveness of several of the existing FMP measures in relation to two major factors: (1) The promotion of regulatory compliance, and (2) the long-term achievement of the FMP's management objectives. The Amendment also adopts a management measure that had previously been implemented in February 1988 as an emergency action (53 FR 5773, February 26, 1988). The FMP established a technical monitoring group (TMG) to "evaluate both current conditions within the fishery and the status of implementation of the management program in relation to the achievement of the FMP objective." The TMG is comprised of assessment scientists and fishery managers from the New England and Mid-Atlantic Fishery Management Councils, the States of Massachusetts and New York, and NMFS. Concurrent with the development of this amendment, the TMG prepared a report evaluating the effectiveness of the FMP. Included in the report were recommendations on modifications to the existing measures of the FMP. Many of the measures proposed in the amendment were also proposed in the TMG report, which strongly supported their implementation as necessary to achieve the goals of the FMP.

In developing Amendment 2, the Council obtained substantial public input through a series of six regional public hearings (Rockland and Portland, Maine; Gloucester and Buzzards Bay, Massachusetts; Galilee, Rhode Island; and Riverhead, New York) which were held from July 18 through July 20, 1988. The proposed measures reflect actions that the Council believes are necessary and appropriate for the achievement of the Council's objectives for managing the multispecies fishery. It remains possible that other measures may be required in the future to support the management program.

Management Measures Proposed in the Amendment

The Amendment proposes the following management measures:

1. An increase in the minimum fish size (total length, TL) for the following regulated species:

Species	Existing	Proposed
Yellowtail flounder	12 inches	13 inches
American plaice (dab)	12 inches	14 inches

Analysis of the overall fishery resource suggests that the current regulated mesh size in the Regulated Mesh Area (RMA) is not being satisfactorily complied with. Assessment data indicate that the average mesh size being used to catch regulated species from the Georges Bank and Gulf of Maine stocks may be as much as one inch less than 5½ inches, the regulated size. Some of the discrepancy is undoubtedly due to the fact that some regulated species are taken in the Exempted Fishery Program (EFP) or in areas where mesh is either not regulated (Southern New England) or regulated at a smaller size (Canadian Zone). Notwithstanding these exceptions, information from fishermen, port agents, and enforcement agents indicates that at least some fishermen use smaller than 5½-inch mesh while operating in the RMA because the currently required minimum mesh size does not retain a satisfactory level of legal-size fish of certain species.

Two illustrations of this discrepancy are 12-inch yellowtail flounder, of which only 45 percent are retained with 5½-inch mesh, and 12-inch American plaice, of which 35 percent are retained. These levels of retention contrast significantly with 55 percent, 60 percent, and 85 percent for 19-inch haddock, 19-inch pollock, and 14-inch witch flounder, respectively. Thus, the desire to retain a higher percentage of 12-inch yellowtail or plaice, for example, promotes the illegal use of smaller mesh or mesh liners. The proposed increases in minimum fish sizes noted above will produce retention levels near 60 percent for both species, which are consistent with levels for other regulated species. It is argued that higher, more consistent levels of retention will promote compliance by reducing the incentive to use small mesh to capture more legal-size fish. This proposal is expected to encourage more widespread use of the current minimum mesh size for nets, which will reduce discard mortality of undersized fish. This proposal will reduce catch in the short term for fishermen currently in compliance with the regulated mesh size, but long-term benefits will accrue through improved industry-wide compliance with mesh regulations. The magnitude of long-term benefits will depend on the extent to which culled flatfish survive when returned to the sea and the escapement of undersized fish through 5½-inch stretch mesh. This proposal will help meet the FMP's long-term objective of achieving spawning potential targets for these and all other regulated species by reducing discards of small and immature fish.

2. An indefinite postponement of the FMP's scheduled increase in regulated mesh (to 6 inches) in the Georges Bank portion of the RMA. Alternatively, vessels operating in the RMA will only be permitted to use nets with mesh no smaller than the regulated size throughout the net, effective January 1, 1990. Currently, the regulated size of 5½-inch mesh is required only in the first 75 meshes from the terminus of the net.

The Council is aware that non-compliance with mesh regulations remains a significant problem for effective implementation of the multispecies management program. Non-compliance stems from several factors, two of which are size retention and the level of enforcement/enforceability. Although some of the Georges Bank regulated species (particularly cod and yellowtail flounder) would benefit from a fishery that used 6-inch mesh, the current level of non-compliance argues against such an action until the Council can be assured that mesh regulations can be fairly and effectively enforced. A decision to increase mesh without

having first established broad-based compliance would only place an additional burden upon those fishermen who already voluntarily comply, and would, in the Council's judgment, lead to industry-wide disregard for mesh regulation.

The Council is aware that certain practices within the harvesting sector thwart the effective use of mesh as a management tool. These practices include "choking-off" the cod end so that the small-mesh extension piece (the twine tube between the belly of the net and the cod end) is effectively used to select and retain fish. The proposal to require nets operated in the RMA to be constructed of mesh no smaller than the regulated size directly addresses the problem of "choking-off" by negating the retention benefit of trying to retain fish with parts of the net other than the cod end.

3. A modification to the language that allows nets of smaller than the regulated mesh to be aboard but not in use in the RMA, by removing from § 651.20(f) paragraphs (3) and (4) and replacing them with "nets which are secured in a manner approved by the Regional Director."

Currently, the definition of nets not "available for immediate use" includes: (a) Nets which are on reels and are covered and secured, and (b) nets on vessels which have the towing wires detached from the fishing gear, in addition to (c) nets stored below deck, and (d) nets stowed and lashed down on deck. This definition was developed to provide flexibility for vessels that either had to fish in two separate areas with differing mesh regulations on the same trip, or had to traverse the RMA on the way to or from fishing grounds where regulated mesh is not required. Because it contains points (a) and (b) noted above, the current definition does not, and cannot provide reasonable assurance to an enforcement officer that small-mesh net found aboard a vessel in the RMA was not used in that area. The two remaining options (c and d) provide the necessary flexibility for fishermen while promoting compliance and maintaining reasonable enforceability. Other methods that assure that small-mesh nets are secured in a manner which significantly limits their chances of being used in the RMA may be approved subsequently by the Regional Director by notice in the **Federal Register.**

4. Adopt regulatory language to facilitate non-reissuance of EFP permits when participants have not complied with reporting requirements.

Currently, it is not possible to deny reissuance of a permit to participate in the EFP when a participant has failed to comply with report submission requirements, unless a Notice of Violation and Assessment (NOVA) has been issued. The Council's position is that reporting is a necessary requirement of participation in the EFP and that a participant should not be allowed to continue in an exempted fishery if he/she does not submit the required trip records on time. The regulatory language that accompanies this proposal makes provision for suspension of current participation or denial of entry, or both, if the applicant fails to report as required under the EFP, but does provide for reinstatement if the applicant submits missing reports within a specified time limit.

5. Establish a trip bycatch limit of 25 percent regulated species for vessels operating in the EFP.

The proposal establishes a two-tier bycatch limit on vessels operating in the EFP. In addition to the existing requirement that participating vessels not exceed a 10 percent bycatch limit of regulated species over the 7- to 30-day reporting period, vessels would not be allowed to land, on any single trip, regulated species in excess of 25 percent of the landings for the target species for which the exemption is issued.

Currently, the EFP is enforced administratively. Individual participating vessels submit reports of their landings on a trip-by-trip basis over a 7- to 30-day reporting period. Landings data are used by NMFS to determine whether the 10 percent bycatch allowance has been complied with by each participating vessel. Under this system, participants can balance heavy bycatch trips with light bycatch trips in order to meet the 10 percent standard over several trips. While the Council understands that reasonable variation in the bycatch of regulated species on a whiting or shrimp trip must be accounted for, landings data demonstrate that some vessels have used the program to fish directly for regulated species with small-mesh gear. The latter fishing practice is not consistent with the Council's intent to reduce juvenile mortality of regulated species, nor is it consistent with achieving the Council's management objectives. Therefore, the Council's proposal is designed to assure that the exempted fishery remains a directed fishery on small-mesh species with minimum impact on regulated species and to improve enforceability of the exempted fishery regulations.

6. A prohibition on trawl vessels from entering Closed Area II during the period of seasonal closure.

In order to promote compliance with the Closed Area II closure and facilitate enforcement, the Council proposes to prohibit trawlers in the area during the period of closure. The proposed measure would provide greater certainty of achieving the goal of preventing fishing pressure on spawning haddock in Closed Area II, and would provide an effective and reliable enforcement tool in this remote, but critical spawning area. Vessels were alleged to have frequently violated Closed Area II during the recent period of closure.

7. The establishment of a minimum size of 9 inches for redfish.

The proposed 9-inch (TL) minimum size for redfish would achieve three objectives: (1) It corresponds with the bottom of the selection range of 5½-inch mesh and is not expected to require any significant discarding of redfish that may be retained in large-mesh fishing operations; (2) the minimum size greatly discourages any directed small-mesh fishing; and (3) the proposed minimum size is consistent with the usual range of sizes of imported redfish from Canada.

8. Minimum fish sizes (TL) shall apply to both commercial and recreational fishermen.

Species	Recreational minimum size	
	Existing	Proposed
Atlantic cod	17 inches	19 inches
Haddock	17 inches	19 inches
Pollock		19 inches
Witch flounder (gray sole)		14 inches
Yellowtail flounder		13 inches
American plaice (dab)		14 inches
Winter flounder (blackback)		11 inches
Redfish		9 inches

Currently, only the minimum fish sizes for cod and haddock apply to recreational fishermen. Because minimum fish and mesh sizes are established in consideration of the total mortality generated by all fishermen, the Council believes that the inherent conservation benefit of the minimum size measure can only be achieved if the same minimum fish sizes apply to all fishermen.

This measure will primarily affect the recreational catch of cod, pollock and haddock in the EEZ. Although there may be recreational fisheries for the other regulated species (yellowtail, winter flounder, witch flounder, American plaice, redfish) in the territorial sea, there are few or no recreational landings of these species from the EEZ. Recreational fishermen fishing in the territorial sea are not subject to these regulations, but are subject to minimum-

size regulations of the coastal States in which they fish. Under provisions in the FMP, an increase in the minimum size of cod to 19 inches is scheduled to occur in October 1989. The proposed rule would implement this size increase at an earlier date.

9. An RMA would be implemented for December through March in an area designated as Nantucket Shoals.

This measure had been implemented as a one-time occurrence by emergency action for the period February 20, 1988, through March 31, 1988, at the request of the Council and the fishing industry. The Council proposes to extend seasonally the RMA mesh regulations into the Nantucket Shoals area in order to protect seasonal concentrations of juvenile cod that have been documented by fishermen, the Massachusetts Division of Marine Fisheries, and the Northeast Fisheries Center of NMFS. The area and time period are intended to correspond to the location and timing of a juvenile cod discard problem that has been documented over the past 2 years. The Northeast Regional Director would be authorized to suspend the RMA extension prior to March 31 of each year if he/she determines that juvenile cod are not sufficiently abundant in the Nantucket Shoals area to warrant large-mesh protection.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99–659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA for the Amendment and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment from the Council (see **ADDRESSES**).

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft RIR, which demonstrates positive long-term economic benefits to the fishery under the proposed management measures. The proposed rule is not expected to have an annual impact of $100 million or more, nor to lead to an increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor to have significant adverse effects on competition, employment, investment, productivity, inovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. You may obtain a copy of the draft RIR from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 99–659, require the Secretary to publish this proposed rule 15 days after its receipt. It is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification is based upon an Initial Regulatory Flexibility Analysis (IRFA) which determined that the average impact in terms of foregone revenue is $12,000 per vessel, out of average gross revenues of $312,000 per vessel. The measure increasing the minimum fish size of yellowtail flounder and American plaice will affect harvesters' landings from individual States differently, from a decline in landings of 12 percent for Maine, to a decline in landings of 42 percent for New York. The measure establishing a redfish minimum size will eliminate directed trips on redfish for bait, which accounted for 41 out of a total of 38,000 trips for all species of groundfish in 1985. A third measure, applying uniform minimum sizes to both commercial and recreational users is expected to result in a decrease in the amount of recreationally harvested cod from the EEZ by approximately 7 percent, by weight, and 19 percent, by number. This is due to an accelerated implementation from the previous date of October 1, 1989, for a size increase to 19 inches for cod. Insufficient data are available for the other species to calculate their impact, which is thought to be minimal.

The measure requiring vessels to have 5½-inch mesh throughout the net in the RMA by January 1, 1990, is expected to have an impact that would be lessened, or eliminated, by the 1-year phase-in period, the usual turnover of nets in use due to wear, and the ability of vessels to use their existing small-mesh nets in the EFP or other areas where there are no mesh regulations. Modifications limiting how small mesh may be allowed on board a vessel in the RMA will have no impact.

The measure proposing modifications to the EFP concerning non-reporting will not impose any costs or loss of revenue for those fishing in compliance with the terms of the program. It was determined from data collected for 1979 through 1983 that the mean percentage of bycatch of regulated species from directed small mesh trips was 10.43 percent. The measure imposing a 25 percent bycatch allowance will result in a loss of revenue only for those not engaged in true small-mesh fisheries.

Prohibiting trawlers from entering Closed Area II during the period of closure will have minimal, if any, impact. The area is in a location that provides no benefit, transiting or otherwise, to those types of vessels prohibited from entering the area during the seasonal closure.

The Nantucket Shoals seasonal RMA is expected to result in a loss of revenue of $130,000 out of $1,760,000. It is expected to have minimal impact on revenue lost from harvest of small-mesh species from the area due to their low abundance in the area occurring at this time of year.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: November 3, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 651 is proposed to be amended as follows:

PART 651—[AMENDED]

1. The authority citation for 50 CFR Part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.7 is proposed to be amended by adding new paragraph (b)(11) to read as follows:

§ 651.7 Prohibitions.

* * * * *

(b) * * *

(11) Enter the area described in § 651.21(a)(2) during a period in which that area is closed, unless allowed by § 651.21(a).

* * * * *

3. Section 651.20 is proposed to be amended by revising paragraphs (a) (1) and (2), (b)(1), (c)(2), (d)(1) introductory text and (2) and (f) to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

(a) * * *

(1) *Gulf of Maine/Georges Bank regulated mesh area* (Figure 1):

(i) Bounded on the east by the U.S.—Canada maritime boundary, defined by the following points in the order stated:

Point	Latitude	Longitude
L	Northward along the irregular U.S.-Canada maritime boundary to the territorial sea.	
K	43°58' N	67°22' W.
M	42°31.1' N	67°44.4' W.
F	42°20' N	67°28.1' W.
G	41°18.6' N	66°24.8' W.

(ii) Bounded by straight lines connecting the following points in the order stated:

Point	Latitude, longitude	Loran C. bearings
N1	40°55.5' N, 66°38.0' W.	5930-Y-30750 and 9960-Y-43500.
N2	40°45.5' N, 68°00' W.	9960-Y-43500 and 68°00' W.
N3	40°37.0' N, 68°00' W.	9960-Y-43450 and 68°00' W.
N4	40°30.5' N, 69°00' W.	9960-Y-43450 and 69°00' W.
N5	40°22.7' N, 69°00' W.	9960-Y-43400 and 69°00' W.
Z	40°18.7' N, 69°40' W.	9960-Y-43400 and 69°40' W.
A	40°35.5' N, 69°40' W.	
B	41°35.0' N, 69°40' W.	
C	41°35.0' N and the territorial sea.	

NOTE: Loran lines are included for the convenience of fishermen.

(iii) Northward along the territorial sea of Massachusetts, New Hampshire, and Maine to the U.S.-Canada maritime boundary at Point L.

(2) *Nantucket Shoals regulated mesh area* (Figure 4): Bounded by straight lines connecting the following points in the order stated:

Point	Latitude, longitude	Loran C bearings
NS1	41°24.0' N, 69°59.0' W.	9960-Y-43850 and 69°59' W.
NS2	41°28.0' N, 69°40.0' W.	9960-Y-43850 and 69°40' W.
NS3	40°56.5' N, 69°40.0' W.	9960-Y-43650 and 69°40' W.
NS4	40°51.5' N, 70°14.0' W.	9960-Y-43650 and 60-X-25175.
NS5	41°00.0' N, 70°17.5' W.	9960-X-25175 and 41°00' N.
NS6	41°10.0' N, 70°19.0' W.	9960-X-25175 and 41°00' N.
NS7	41°15.5' N, 70°18.5' W.	9960-X-25175 and 41°15.5' N.

and then to NS1 following the seaward limit of the territorial sea.

NOTE: Loran lines are included for the convenience of fishermen.

(i) This area will be in effect for the months of December through March, inclusive, unless suspended pursuant to § 651.20(a)(2)(ii).

(ii) The Regional Director may suspend this Regulated Mesh Area (RMA) by notice in the **Federal Register**, if he/she determines that concentrations of juvenile cod are not sufficiently abundant in the area to warrant protection by this RMA.

(b) *Trawl nets*—(1) *Diamond mesh.* Except as provided for in §§ 651.20(b)(3), 651.20(d) and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine used by a vessel fishing in the mesh areas described in paragraphs (a)(1) and (a)(2) of this section is 5½ inches throughout the entire net.

* * * * *

(c) * * *

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b) of this section, the mesh in bottom-tending gillnets must be the same during the months of November through February as that in effect in the Regulated Mesh Area, as defined in paragraph (a)(1) of this section.

(d) *Midwater gear exception.* (1) For the RMA south of 42°20' N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squids may take place throughout the fishing year with mesh sizes less than the regulated size provided that:

* * * * *

(2) For the RMA north of 42°20' N. latitude, fishing for herring and mackerel may take place from December through May with mesh sizes less than the regulated size, provided that the requirements of paragraphs (d)(1) (i) and (ii) of this section are met and that the bycatch of regulated species does not exceed 1 percent, by weight, of herrings and mackerel on board the vessel.

* * * * *

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have available for immediate use any net not meeting the requirements specified in paragraphs (b) and (c) of this section, or mesh that is rigged in a manner that is inconsistent with § 651.20(e)(2), while in the areas described in paragraph (a) of this section. A net that conforms to one of the three following specifications and which can be shown not to have been in recent use is considered to be not "available for immediate use":

(1) Nets stored below deck; or

(2) Nets stowed and lashed down on deck; or

(3) Nets which are secured in a manner approved by the Regional Director. After review and approval, the Regional Director shall specify alternative manner(s) of securing nets by notice in the **Federal Register**.

§ 651.21 [Amended]

4. In § 651.21 (a) heading is revised to read *"Georges Bank"*.

5. In § 651.22(a)(1), the table entry for Point B is revised to read as follows:

Point	Latitude	Longitude
B	41°35' N	69°40' W.

6. Section 651.22 is amended by revising paragraphs (c) and (e)(2) to read as follows:

§ 651.22 Exempted fishery program.

* * * * *

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(3) The Regional Director may suspend current participation or deny entry into the exempted fishery program, or both, to an applicant if:

(i) The Regional Director determines that the applicant has failed to file reports as required by § 651.22(f); or

(ii) The applicant violates any provision of these regulations or of the Magnuson Act, providing a notice of

violation and assessment for such violation has been issued to the applicant.

(4) With respect to any suspension or denial for failure to report under paragraph (c)(3)(i) above, the Regional Director may reinstate the applicant or approve the applicant's request to enter the exempted fishery program for subsequent reproting periods; if the applicant submits, and the Regional Director receives, completed missing reports. For missing reports received within 5 calendar days of suspension or denial, the Regional Director shall decide whether reinstatement is appropriate within 14 calendar days of receiving the missing reports. For missing reports received after the 5 calendar days of suspension or denial, the Regional Director shall decide within 30 calendar days of receiving the reports. The Regional Director's authority to suspend participation in or deny into the exempted fishery program is separate and distinct from any civil penalty assessed under § 651.7(b)(8).

* * * * *

(e) * * *

(2) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and maximum regulated species percentage restrictions as follows:

Period	Target species	Comments
June through November	Dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid.	Regulated species weight may not exceed 10% of the total landings of dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid during the reporting period. Regulated species weight may not exceed 25% of the combined weight of dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid on each trip.
December through January	Silver hake (whiting)	Regulated species weight may not exceed 10% of the total landings of silver hake and shrimp during the reporting period. Regulated species weight may not exceed 25% of the combined weight of silver hake and shrimp on each trip.
December through May, or as specied by ASMFC [1].	Shrimp	Regulated species weight may not exceed 10% of the total landings of shrimp the reporting period. Regulated species weight may not exceed 25% of the weight of shrimp on each trip.

[1] The Northern Shrimp Section of the Atlantic States Marine Fisheries Commission is responsible for the management of northern shrimp. The Section has designated a regulatory period from December through May within which it sets the annual fishing season for northern shrimp. The Section has the authority to adjust the regulatory period or add-additional measures appropriate for the conservation of northern shrimp. The Section will consult with the New England Fishery Management Council regarding recommendations to adjust the regulatory period, with respect to the management of multispecies.

7. Section 651.23 is proposed to be amended by revising paragraph (a) to read as follows:

§ 651.23 Minimum fish size.

(a) The minimum fish sizes (total length) for certain regulated species follow:

	Inches
Cod, haddock, and pollock	19
Witch flounder (gary sole)	14
Yellowtail Flounder	13
American plaice (dab)	14
Winter flounder (blackback)	11
Redfish	9

* * * * *

8. In Part 651, Figures 1 and 4 are revised to read as follows:

BILLING CODE 3510-08-M

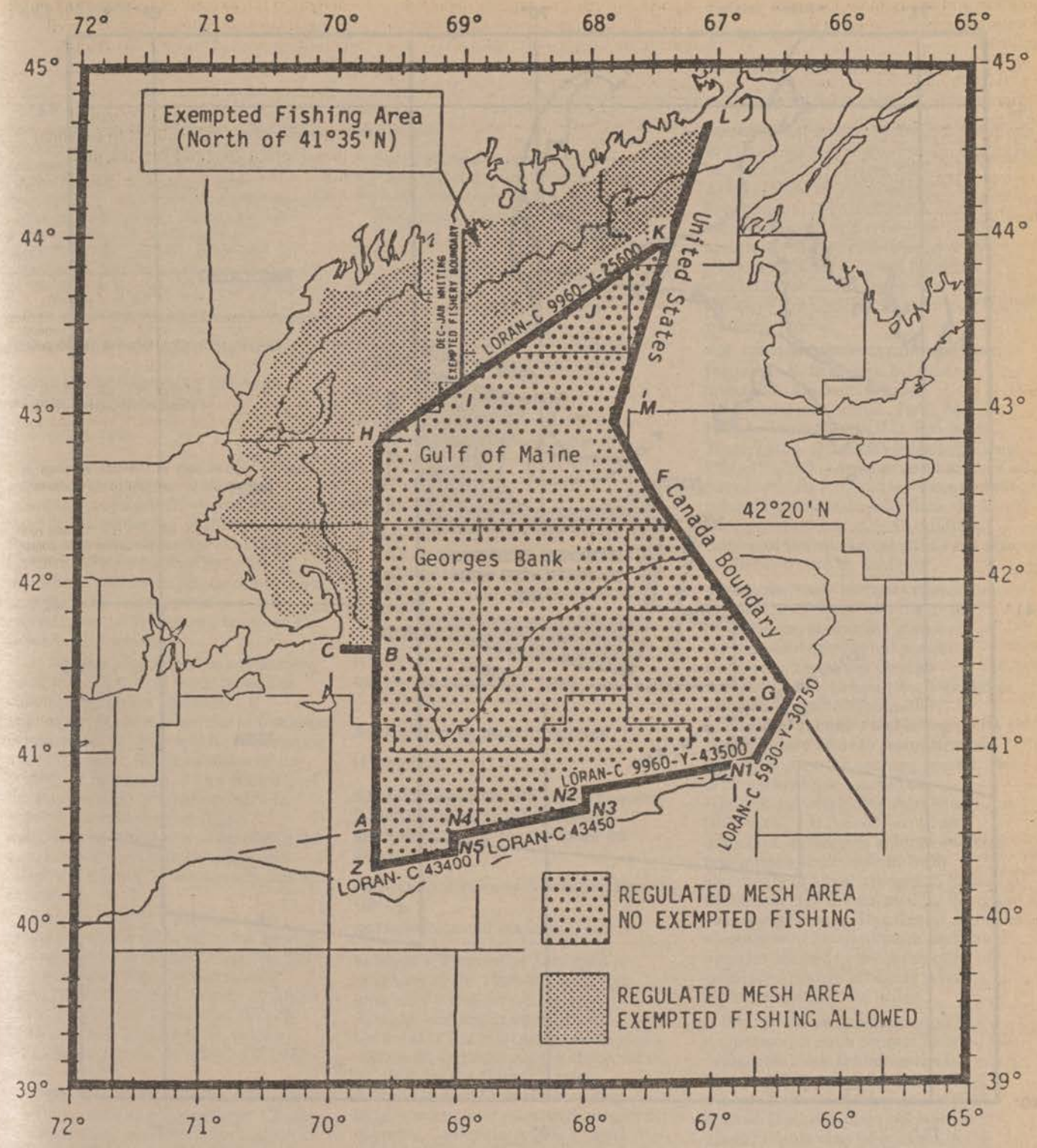

Figure 1. New England regulated mesh areas and areas of exempted and non-exempted fishing. See text for details. These areas are defined in 651.20(a)(1). Loran lines are included for the convenience of fishermen.

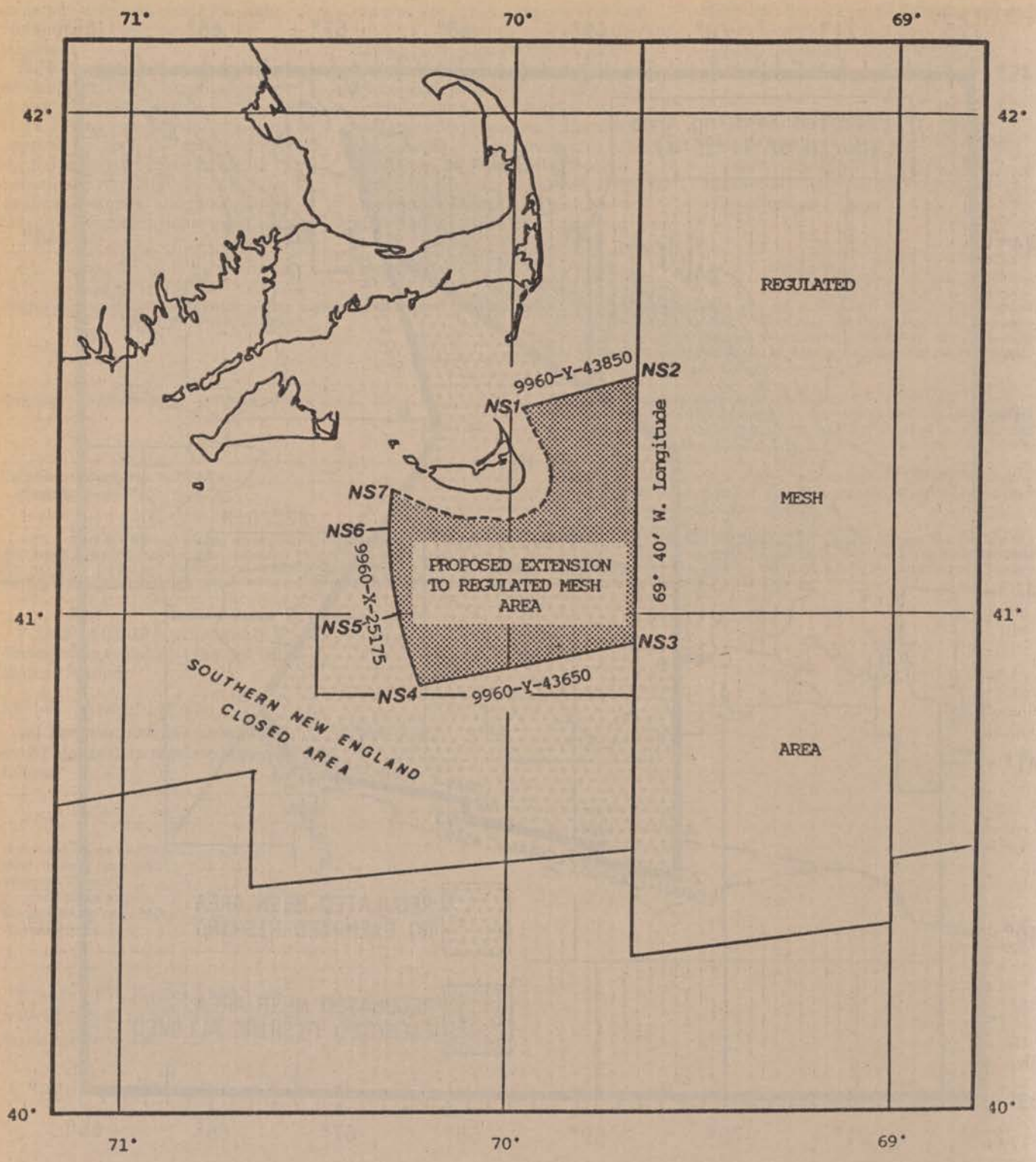

Figure 4. Nantucket Shoals regulated mesh area. See text for details. This area is defined in 651.20(a)(2). Loran lines are included for the convenience of fishermen.

[FR Doc. 88-25918 Filed 11-4-88; 4:42 pm]
BILLING CODE 3510-08-C

Notices

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 4, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) sine the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the informaiton collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the informaiton; (8) an indication of whether section 3540(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Cooperative Service
- Food and Nutrition Service

Performance Reporting System, Management Evaluation, Data Analysis and Corrective Action
None
Recordkeeping; Semi-annually; Annually
State of local governments; Federal agencies or employees; 5,970 responses; 593,215 hours; not applicable under section 3504(h)
Carole Phillips (703) 756–3384

Extension

- Agricultural Cooperative Service Questionnaire: New Cooperative Volume and Structure (Producer Survey for New Cooperative Activity)

N/A
On Occasion
Individuals or households; Farms; 245 responses; 245 hours; not applicable under section 3504(h)
William R. Seymour (202) 653–6969

Larry K. Roberson

Acting Departmental Clearance Officer.

[FR Doc. 88–25873 Filed 11–8–88; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

[FV–89–005]

Navel Oranges Grown in Arizona and Designated Part of California; Marketing Policy for the 1988–89 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the 1988–89 marketing policy for navel oranges grown in Arizona and designated part of California. The marketing policy was discussed and approved on September 27, 1988, by the Navel Orange Administrative Committee, which locally administers the marketing order covering California-Arizona navel oranges. The marketing policy contains information on crop and market prospects for the 1988–89 season.

DATE: Written suggestions, views, or pertinent information relative to the marketing of the 1988–89 California-Arizona navel orange crop will be considered if received by December 9, 1988.

ADDRESS: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, Room 2085–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456. Such submissions should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5127. Growers and handlers of navel oranges may obtain a copy of the marketing policy directly from the Navel Orange Administrative Committee. Copies of the marketing policy are also available from Ms. Schlatter.

SUPPLEMENTARY INFORMATION: Pursuant to § 907.50 of the marketing order covering navel oranges grown in Arizona and designated part of California, the Navel Orange Administrative Committee, hereinafter referred to as the "committee," is required to submit a marketing policy to the Secretary prior to recommending regulations for the ensuing season. The order, issued pursuant to the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended, authorizes volume and size regulations applicable to fresh shipments of navel oranges to domestic markets which are defined by the order to include Canada. Regulation of export shipments of navel oranges and navel oranges utilized in the production of processed orange products is not authorized under the order.

Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments

to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy, the committee should give due consideration to the onset and duration of prorate, and size regulation. In the event that it becomes advisable to substantially modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

The committee adopted its marketing policy for the 1988–89 marketing season at its September 27, 1988, meeting in Los Angeles, California. Various meetings to develop, discuss and review the committee's marketing policy were held throughout the production area on September 9 in Lindsay, California, September 13 in Los Angeles, California, September 15 in Tempe, Arizona, September 19 in Orland, California, September 23 in Riverside, California, October 4 in Visalia, California, and October 11 in Tempe, Arizona. Substantial numbers of industry representatives were present at many of these meetings.

The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of navel oranges that can be shipped each week to domestic outlets during the season, without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In addition to providing the Secretary with information specified in the marketing order about crop and marketing conditions, the policy statement affords an opportunity for growers and handlers to gain a broad perspective of the industry as it relates to all prorate districts and supplies a view of the anticipated economic environment in which the total crop will be marketed. The committee identified an array of general considerations in formulating its 1988–89 marketing policy.

Historically, the most prominent characteristics of the California-Arizona navel orange industry has been continuing growth. Production of 40,000 cars a season, which at the time was considered the upper level of marketability, was first reached in the 1969–70 season, and has been consistently exceeded ever since.

Another characteristic is a shift in the geography of production. Until the mid-1960s, acreage and production was about evenly divided between the districts of Arizona and Southern California and the desert valleys, and the districts in the Central Valley of California. Over the past two decades there has been a continuing shift northward. District 1 last year had 96,000 bearing acres, nearly 85 percent of the entire production area, and accounted for about the same percentage of total production.

The shift to District 1 has not changed the basic nature of the industry, but it has accentuated some of the problems of marketing while at the same time minimizing others.

The major benefit of the growth of District 1 has been the availability of more fruit for the fresh market. As overall production has increased, so has the amount available as fresh fruit to the consumer. During the past five years of near record crops, nearly 80 percent of all navel oranges grown have reached consumers as fresh fruit.

An important characteristic of the navel orange is that it is primarily a fresh market orange, in contrast with other citrus varieties which have viable alternative uses. Juice from navel oranges develops a bitter off-flavor within a short time after it has been squeezed. This characteristic precludes the use of navel oranges for juice except when blended with juice from other varieties of oranges, and, in most years, prices received for navel oranges sold to processors have produced negative returns in terms of on-tree prices.

Another major characteristic of navel oranges considered by the committee in developing its marketing policy is the ability of the fruit to be held on the trees for an extended period. This has proven to be useful in extending shipments throughout the marketing season while narrowing fluctuations in short term shipping volumes. In many other crops, mature fruit can be harvested and stored for an extended marketing period. However, navel oranges are not amenable to this storage practice as they develop flavor characteristics making them unusable for any purposes. Thus, the only practical system for handling navel oranges is to pick them and pack them at the time they are needed for the market, a market system which requires leaving much of the crop on the tree for extended periods. Therefore, the industry has developed a variety of strategies which extend the navel orange season. These include the use of growth regulators which can delay maturity for long periods, planting early or late maturing varieties, and using frost protection devices.

California-Arizona navel oranges are a winter orange produced and shipped between October and June. Since the first damaging frosts may come as early as November and the danger is present until mid-March, the bulk of the crop is exposed to possible damage or loss and this risk increases each day the fruit remains on the tree. This situation has always existed in the California orange industry, but the northward shift in acreage has made it more pronounced.

Despite the dangers of freeze damage, the California-Arizona navel orange industry is committed to, and plans for, a long season. The present production levels mandate this, and producers and handlers have developed their operating methods accordingly to include the planting of early maturing clones and the increased use of frost protection devices such as orchard heaters, wind machines, water application systems, and frost protection chemicls.

In its 1988–89 marketing policy, the committee projected the California-Arizona navel orange crop at 75,750 cars (1,000 cartons at 37.5 pounds net weight each equals one car). This compares with last year's estimated total production of 65,594 cars. The National Agricultural Statistics Service (NASS) September estimate for the 1988–89 crop was 70,000 cars for the State of California, which, when combined with the committee's estimate of 1,300 cars for the Arizona desert valley, totals 71,300 cars for the entire production area.

The committee estimates District 1, Central California, 1988–89 production at 65,700 cars compared to 55,225 cars produced 1987–88. In District 2, Southern California, the crop is expected to be 8,200 cars compared to 8,842 cars produced last year. In District 3, the Arizona-California desert valley, the committee estimates a production of 1,300 cars compared to 1,027 cars in 1987–88. In District 4, Northern California, a 550 car crop is projected compared to 500 cars last year.

In terms of total crop utilization, the committee expects 64 percent of the 1988–89 crop to be accounted for in domestic fresh markets compared with 69 percent in 1987–88; fresh exports are projected to require 9 percent of total 1988–89 utilization compared with 8 percent in 1987–88; and processing and other uses would account for the residual 27 percent compared with 23 percent in the last season. Expressed in terms of the actual volumes of navel

oranges shipped or processed, domestic fresh market shipments would be up about 7 percent from 1987–88 estimates, export shipments would be up about 15 percent, and processed and other utilization would increase approximately 39 percent.

The committee has projected much smaller orange sizes in 1988–89 crop than in the previous year. Because of the smaller fruit sizes, the skin texture of the fruit is expected to be smoother and thinner than the past season. Fruit quality is expected to range from excellent to well above average.

The committee estimates that shipments of domestic fresh outlets, including Canada, during the 1988–89 season will account for 48,500 cars. Last year a total of 45,087 cars were shipped to fresh domestic markets. Fresh export shipments are expected to total 6,250 cars compared to 5,399 cars last year. Processing and other dispositions are forecast at 21,000 cars compared to 15,108 cars last year. The committee expects that the fresh domestic market will absorb all the fruit that meets quality standards and is economically feasible to ship.

Based on current projections, shipments are expected to begin at the end of October and finish in late May. The committee has developed a schedule of estimated weekly shipments covering the 1988–89 season.

The committee reports that Florida round orange production is expected to be 294,000 cars, about 6 percent greater than last year. In Texas, orange production for the 1988–89 is expected to be 3,200 cars, an increase of more than 18 percent from last season. Production of apples is estimated at 192.1 million bushels in 1988–89 compared to 251.0 million bushels in 1987–88. Winter pear fresh pack is estimated at 12.4 million bushels in 1988–89 compared to 12.3 million bushels last year. Of increasing importance in considering the supplies of competitive non-citrus fruits are "summer fruit" importations from Chile (nectarines, plums, peaches, and grapes), and it is expected that this upward trend will continue for some time. General economic conditions are expected to be favorable.

The 1987–88 season average fresh equivalent on-tree grower returns for California-Arizona navel oranges as reported by the NASS were $3.94 per carton. This was about 71 percent of the equivalent season average parity of $5.53 per carton.

Based upon fresh utilization levels indicated in the Navel Orange Administrative Committee's Marketing Policy, the current point estimate of the season average fresh on-tree price for 1988–89 is $4.40 per carton, or 78 percent of the projected season average fresh on-tree equivalent parity price of $5.65. It is currently estimated that there is less than a 2.5 percent probability that the 1988–89 season average fresh on-tree price will exceed the projected season average fresh on-tree equivalent parity price.

In discussing the possible need for prorate regulation early in the season, the marketing policy indicated that the beginning of harvest is expected to start somewhat earlier this year than a year ago. Therefore, the committee anticipates that volume regulation could be recommended earlier than last year.

In view of the above, it is the committee's view that early shipments without volume regulation could be excessive and disruptive to the early market and to the market immediately following that time. The committee points out that such recommendations, of course, will depend on the rate of the early harvest and anticipated market conditions at the time regulations are considered. The committee believes it is essential to the successful marketing of the entire crop that shipments be made in an orderly manner from the beginning of the season.

The marketing order identifies areas the committee should consider in recommending prorate regulation and states that the committee, in making its recommendations, shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes; (2) supply of oranges on track at, and en route to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and supplies of competitive fruits; (5) trends and level in consumer income; and (6) other relevant factors.

In order to provide an opportunity for public input, the Department will accept written views and information pertinent to the marketing policy and the need for, or level of, regulations for the 1988–89 season. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses. This notice provides a 30-day period for the receipt of comments. This period is considered to be adequate due to the number of meetings held throughout the production area, both prior to and subsequent to the adoption of the marketing policy, at which such policy was reviewed and disucssed by industry representatives and interested persons.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: November 4, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–25870 Filed 11–8–88; 8:45 am]

BILLING CODE 3410–02–M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date and Time: December 1, 1988, 8:30 a.m.–5:00 p.m.; December 2, 1988, 8:30 a.m.–5:00 p.m.

Place: U.S. Department of Agriculture, Room 338C, Aerospace Building, Washington, DC 20250–2200.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. John A. Naegele, Executive Secretary, U.S. Department of Agriculture, Cooperative, State Research Service, Room 328, Aerospace Building, Washington, DC 20251–2200, Telephone: 202447–4587.

Done at Washington, DC this 1st day of November 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service

[FR Doc. 88-25947 Filed 11-8-88; 8:45 am]

BILLING CODE 3410-22-M

COMMISSION ON CIVIL RIGHTS

Pennsylvania Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on December 1, 1988, in Room 317 of the U.S. Customs House, 2 Chestnut Street, Philadelphia, Pennsylvania. The purpose of the meeting is to discuss: The status of the Commission; a November 4–5, 1988 Regional Conference at which the Advisory Committee was represented; the April 1988 summary report on the State law requiring the collection of data on bias-related incidents; and plans for Fiscal Year 1989.

Persons desiring additional information, or planning a presentation to the Committee should contact Committee Chairperson Susan M. Wachter, (215/898-6355) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 4, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-25970 Filed 11-8-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held December 6, 1988, 9:30 a.m., Room 1617-F at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

Open Season

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of upcoming regulatory changes in the telecommunications areas.
4. Public comments are requested on decontrol or relaxation of ECCN 1519A and 1520A for either the Bloc or PRC.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: November 4, 1988.

Betty Ann Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-25897 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-412-801]

Preliminary Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (UK) are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of a certain class or kind of antifriction bearings (other than tapered roller bearings) and parts thereof from the UK. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from the UK as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Mary Clapp, Carole Showers, or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230, telephone: (202) 377-0161, 377-3965, 377-3217, or 377-2239 respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from the UK are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do exist with respect to imports of a certain class or kind of AFBs from the UK, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from the UK (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to INA Bearings Ltd. (INA), RHP Bearings Ltd. (RHP), SKF UK Limited (SKF), and Rose Bearings, Ltd. These companies account for a substantial portion of exports of the subject merchandise from the UK to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from the UK. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from the UK.

However, we have only recently been able to identify an exporter of plain bearings from the UK, Rose Bearings, Ltd. (Rose). On October 21, 1988, a questionnaire was issued to Rose; responses will not be received until late November. Given these circumstances, we consider it appropriate to preliminary determine that plain bearings from UK are not being, nor are likely to be, sold in the United States at less than fair value.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging the Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38(a), the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from the UK. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Speciality Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market sales below the COP.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to the following investigations:

1. Ball Bearings—SKF
2. Spherical Roller Bearings—SKF
3. Needle Roller Bearings—INA

Therefore, the Department has reinstated COP investigations for these companies on the classes or kinds of AFBs listed above. Petitioner submitted on October 21, 1988, a new allegation of sales below the cost of production for sales by RHP of ball bearings and cylindrical roller bearings. The Department is currently reviewing this allegation and will make a determination in the near future.

Voluntary Respondents

On July 1 and 7, 1988, we issued questionnaires to companies which had expressed interest in submitting voluntary responses in these investigations. On September 15, 16, and 19, 1988, we received a voluntary response from Cooper Bearings Ltd. (Cooper), a producer of cylindrical roller bearings in the UK. This response was not timely as it was received after the final due date for questionnaire responses (September 6, 1988). This response also contained material deficiencies. Therefore, it was not considered for purposes of this investigation. Accordingly, cylindrical roller bearings exported by Cooper will be subject to the "All Other" rate.

Period of Investigation

This period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchanidise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought

and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from the UK to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;

2. This was a customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *RHP:* RHP reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, ocean freight, U.S. duty, and U.S. inland freight in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for advertising, commission, credit expenses, and indirect selling expenses pursuant to sections 772(e)(1) and (2) of the Act.

RHP has calculated its foreign inland freight, ocean freight, packing, and U.S. inland freight based on value rather than weight or volume. We have requested that RHP calculate revised allocation rates for these expenses based on how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of our preliminary determination, we have accepted RHP's allocation rates as the best information available.

RHP claimed advertising expenses incurred on its U.S. sales as an indirect expense. For purposes of this determination and as the best information available, we are treating advertising expenses as a direct selling expense because RHP did not clearly specify whether these expenses were directed at its customers or its customers' customers.

B. *SKF:* SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, inland freight, marine insurance, and ocean freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, "other expenses", repacking expenses in the United States, technical service expenses, warranty expenses, and indirect selling expenses, pursuant to sections 772(e)(1) and (2) of the Act.

SKF claims that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

II. Spherical Roller Bearings

SKF: SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP for spherical roller bearings based on packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

RHP: RHP reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP for cylindrical roller bearings based on packed, delivered prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: INA reported that less than 33 percent by volume of its U.S. sales were identical to products sold in the home market and did not provide home market sales of similar merchandise. (*See*, "Alternative Reporting Requirements" section of this notice.) Lacking these comparisons, we have applied best information available for those sales which would achieve the 33 percent threshold. We have used the margin calculated as best information available since this rate was higher than the rate provided in the petition for this class or kind of merchandise from the UK.

All of INA's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. U.S. warehouse price to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling (which included containerization, marine insurance, ocean freight, U.S. inland freight and insurance), foreign inland freight, foreign inland insurance, and U.S. duty, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP for credit expenses, warranty expenses, and U.S. indirect selling expenses and non-U.S. indirect selling expenses, pursuant to section 772(e)(1) and (2) of the Act.

For the following expenses, INA used the same allocation rates for U.S. sales of merchandise from INA-FRA, INA-France and INA-UK: brokerage and handling, foreign inland freight, foreign inland insurance, packing and non-U.S. selling expenses. We have requested that INA calculate separate allocation rates, by country, for these charges. Also, INA has calculated its foreign inland freight, ocean freight and packing based on value, rather than weight or volume. We have also requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rates as the best information available.

V. Plain Bearings

Rose: As stated in the "Case History" section of this notice, given that we have only recently identified Rose as an exporter of plain bearings, and its response will not be due until late November, we have preliminarily determined that Rose's sales of plain bearings are not being made at less than fair value.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales. The calculation of foreign market value for each respondent is detailed below.

I. Ball Bearings

A. *RHP:* We calculated foreign market value based on packed, delivered prices to unrelated customers in the home market. We made deductions form the home market price, where appropriate, for inland freight, inland insurance, home market packing and rebates. We added U.S. packing to the home market price in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses and credit notes, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from home market price, where appropriate, for credit expenses and credit notes. We also deducted indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

RHP calculated its home market freight and packing based on value rather than weight or volume. We have requested that RHP calculate revised allocation rates for these expenses based on how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of this preliminary determination, we have accepted RHP's allocation rates as the best information available.

B. *SKF:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, home market packing, and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We also deducted certain indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SKF's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of these indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

II. Spherical Roller Bearings

SKF: We calculated foreign market value for spherical roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

RHP: We calculated the foreign market value for cylindrical roller bearings based on packed, delivered prices to unrelated customers in the home market. The adjustments to home market price for comparisons involving purchase price and ESP sales were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price for inland freight and inland insurance, and discounts. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We also deducted indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

INA has calculated its foreign inland freight based on value rather than

weight or volume. We have requested that INA calculate a revised allocation rate for this expense based on how its costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rate as the best information available.

V. Plain Bearings

Rose Bearings, Ltd.: Refer to "Case History" section of this notice.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from the UK. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(1) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. Based on our analysis of the monthly shipment data submitted by respondents, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of cylindrical roller bearings from RHP have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) are met for RHP's exports of cylindrical roller bearings.

SKF, however, has failed to provide the Department with adequate information upon which to base a determination. Therefore, as best information available, we are assuming that imports from SKF have been massive over a relatively short period of time for spherical roller bearings. Therefore, we also find that the requirements of section 733(e)(1)(B) are met for SKF and spherical roller bearings.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by UK manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient [*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).] Since RHP and SKF sell in the United States through related companies, and their rates are sufficiently high, we find that the requirements of section 733(e)(1)(A) are met for these companies with respect to two classes or kinds of merchandise. Therefore, the following chart sets forth our company-specific preliminary determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from the UK.

	Critical circumstances
Ball bearings:	
SHP	No.
SKF	No.
All others	No.
Spherical roller bearings:	
SKF	Yes.
All others	Yes.
Cylindrical roller bearings:	
RHP	Yes.
All others	Yes.
Needle roller bearings:	
INA	No.
All others	No.
Plain bearings:	
Rose	No.
All others	No.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from the UK, as defined in the "Scope of Investigations" section of this notice, with the exception of Rose and all other producers of plain bearings, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of those products from those manufacturers, producers, and exporters in the UK where we have preliminarily determined that critical circumstances exist (*see*, the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from

the UK exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
RHP	32.15
SKF	205.07
All others	131.86
Spherical roller bearings:	
SKF	24.82
All others	24.82
Cylindrical roller bearings:	
RHP	45.56
All others	45.56
Needle roller bearings:	
INA	174.17
All others	174.17
Plain bearings:	
Rose	0.00
All others	0.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

October 27, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

Appendix I—Scope of These Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704 and 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.130); and other bearings (except tapered roller bearings) and parts thereof (TSUSA items 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA items are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all plain bearings which do not employ rolling elements. Plain bearing entering under

TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

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[A-401-801]

Preliminary Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from Sweden are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of a certain class or kind of antifriction bearings (other than tapered roller bearings) and parts thereof from Sweden. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Sweden as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Carole Showers, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-0161 or 377-3217, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject mechandise) from Sweden are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Sweden, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Sweden (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to Aktiebolaget SKF (AB SKF). This company accounts for a substantial portion of exports of the subject merchandise from Sweden to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Sweden. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from Sweden.

However, since plain bearings enter the United States under a basket TSUSA category, we are unable to definitively establish whether plain bearings were imported from Sweden during the period of investigation. In addition, we are unable to specifically identify any Swedish exporters of plain bearings to the United States. Therefore, we have preliminarily determined that plain bearings from Sweden are not being, or are likely to be, sold in the United States at less than fair value. We will continue to attempt to establish whether plain bearings from Sweden were imported and attempt to identify any Swedish exporters of plain bearings to the United States during the period of investigation for purposes of our final determination.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see* "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging the Torringotn Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 7732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in

the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38(a), the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all intersted parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: it at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from Sweden. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on JUly 13, 1988, we issued a decision memorandum stating that the

products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, respondent objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), respondent argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market and third country sales below the COP, as appropriate.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to SKF ball bearings and spherical roller bearings. Therefore, the Department has reinstated COP investigations for these products only.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from Sweden to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For those sales where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with secion 772(c) of the Act.

All of SKF's U.S. sales were ESP transactions. The calculation of United States price for each class or kind of merchandise is detailed below.

I. Ball Bearings

SKF reported that more than 33 percent by volume of its U.S. sales were identical to products in the third country market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical third country market matches in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, inland freight, marine insurance, and ocean freight, in accordance with section 772(d) (2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, "other expenses", repacking in the United States, technical service expenses, warranty expenses, and indirect selling expenses pursuant to sections 772(e)(1) and (2) of the Act.

SKF reported a minimal amount of purchase price sales during the POI; however, SKF did not report complete sales data for these transactions. For both these reasons, we did not include any purchase price sales in our calculation of United States price.

SKF notified us that approximately fifty percent of its reported U.S. sales of ball bearings and one percent of its sales of spherical roller bearings were produced in a country other than Sweden. SKF claims that although it is impossible for them to separate sales of this merchandise from that produced in Sweden. United States price of multiple sourced products are comparable. While we will carefully examine this issue at verification, we have included all reported sales in our calculation of United States price as best information available.

SKF claimed that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

II. Spherical Roller Bearings

SKF reported that more than 33 percent by volume of its U.S. sales were identical to products in the third country market. (See, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical third country market matches in our price-to-price comparisons. We calculated ESP for spherical roller bearings based on delivered prices to unrelated purchasers in the United States. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

SKF reported that more than 33 percent by volume of its U.S. sales were identical to products in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons. We calculated ESP for cylindrical roller bearings based on delivered prices to unrelated purchasers in the United States. The adjustments were identical to those described above for ball bearings.

Foreign Market Value

In accordance with secion 773(a) of the Act, we calculated foreign market value based on home market sales and, where appropriate, third country sales. The calculation of foreign market value is detailed below.

I. Ball Bearings

Following the methodology for determining home market viability, we found that the home market sales of ball and spherical roller bearings were not of a sufficient quantity to provide an adequate basis for foreign market value. (*See* "Such or Similar section of this notice.) In our original questionnarie, we had requested that respondent provide third country sales information where the home market was determined to be not viable. SKF did not provide us with this information. Therefore, on September 16, 1988, we issued a letter to SKF again requesting third country sales data. On September 23, 1988, SKF submitted arguments challenging the Department's finding that the home market is not viable, while also providing the Department with the requested third country sales data for sales to the Federal Republic of Germany (FRG), its largest third country market for sales of ball and spherical roller bearings from Sweden.

On October 17, 1988, petitioner submitted a letter requesting that the Department use constructed value as the basis for determining the foreign market value of ball bearings because the third country data is unreliable. Petitioner asserts that the reported third country sales include sales of ball bearings not manufactured in Sweden. Petitioner argues that, in order for sales of multiple origin products to be used, the Department must determine that the foreign market value in the FRG is higher than that in Sweden, adjusted for certain costs, pursuant to the special rule for multinational corporations, as provided for in section 773(d) of the Act, *see* 19 U.S.C. 1677(d).

First, petitioner has provided no evidence that the reported third country sales are of multiple origin and, therfore, an unreliable basis upon which to determine foreign market value. Second, petitioner has not provided appropriate pricing and cost information to demonstrate that the foreign market value of such or similar merchandise in the FRG is higher than the foreign market value of such or similar merchandise produced in Sweden. Therefore, for purposes of the preliminary determination, we are using the third country data provided by respondent as the basis for foreign market value.

We calculated foreign market value based on delivered prices to unrelated customers in the third country market. We made an adjustment for interest earned on delayed payments. We made deductions from the third country price, where appropriate, for export packing expenses, foreign inland freight, and inland freight. We added U.S. packing to the third country price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions were ESP sales, we made further deductions, where appropriate, for credit expenses and warranty expenses. We also deducted certain indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all third country products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SKF's response included a claim for third country "indirect selling expenses". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of the indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

SKF claimed cash discounts, rebates, and technical services as direct selling expenses. However, these claims were not adequately supported. Therefore, we treated them as indirect selling expense.

SKF also claimed an adjustment for a category labelled "other expenses". However, no description of these expenses was provided. Therefore, these expenses were disallowed.

II. Spherical Roller Bearings

We calculated third country price for spherical roller bearings based on delivered prices to unrelated customers in the third country. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

We calculated foreign market value based on c&f, ex-factory, and delivered prices to unrelated customers in the home market. We made an adjustment to home market price for interest earned on delayed payments. We made deductions from the home market price, where appropriate, for inland freight, home market packing, and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit expenses. We also deducted indirect selling expenses in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Sweden. Section 773(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of

domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. We have asked SKF to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. Based on our analysis of the monthly shipment data submitted by respondent, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of the spherical roller bearings from SKF have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) are met for SKF spherical roller bearings.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Swedish manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. *[See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).] Since SKF sells in the United States through related companies, and its rate is sufficiently high, we find that the requirements of section 733(e)(1)(A) are met for these companies with respect to spherical roller bearings.

Therefore, the following chart sets forth our preliminary determinations with respect to the existence of critical circumstances for each class or kind of merchandise from Sweden.

	Critical circumstances
Ball bearings:	
AB SKF	No.
All others	No.
Spherical roller bearings:	
AB SKF	Yes.
All others	Yes.
Cylindrical roller bearings:	
AB SKF	No.
All others	No.

Verification

We will verifiy the information used in making our final determinations in accordance with section 776(a) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Sweden, as defined in the "Scope of Investigations" section of this notice, with the exception of entries of needle roller and plain bearings, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of spherical roller bearings from Sweden (*see*, the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Sweden exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
AB SKF	162.52
All others	162.52
Spherical roller bearings:	
AB SKF	22.37
All others	22.37
Cylindrical roller bearings:	
AB SKF	24.30
All others	24.30
Needle roller bearings; All manufacturers/producers/exporters	0.00
Plain bearings; All manufacturers/producers/exporters	0.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-

hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

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[A-485-801]

Preliminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from Romania are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of antifriction bearings (other than tapered roller bearings) and parts thereof from Romania. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Romania as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Carole Showers, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-0161, or 377-3217, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Romania are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Romania, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Romania (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaire to Technoimportexport. This company accounted for all known exports of the subject merchandise from Romania to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. The response to Section A was due on June 14, 1988, and the responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Romania. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner submitted insufficient information supporting the claim of LTFV sales of cylindrical roller bearings, needle roller bearings, and plain bearings from Romania. Accordingly, on September 26, 1988, we rescinded our initiations of antidumping duty investigations on these classes or kinds of merchandise from Romania (53 FR 39327, October 6, 1988).

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

At the request of the respondent, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondent prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to being petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products From Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Period of Inestigation

The period of investigation is October 1, 1987 through March 31, 1988.

Fair Value Comparisions.

To determine whether sales of the subject merchandise from Romania to the United Statess were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Petitioner alleged that Romania has a state-controlled economy, within the meaning of section 773(c) of the Act, and that sales of the subject merchandise in that country do not permit a determination of foreign market value. After an analysis of the Romanian economy, consideration of the submissions by the parties, and past Departmental practice, we have preliminarily concluded that Romania has a state-controlled economy for purposes of these investigations. Basic to our decision on this issue is the fact that the central government of Romania controls the prices and levels of production of the antifriction bearing industry, as well as the internal pricing of the factors of production.

With respect to spherical roller bearings, although we requested factors of production information for all products sold in the United States during the period of investigation, Tehnoimportexport provided information for products accounting for less than two percent of the quantity of total U.S. sales of this class or kind of merchandise. We consider this to be totally inadequate for the basis of determining whether spherical roller bearings were sold in the United States at less than fair value. In accordance with section 776(c) of the Act, when a company submits a response which we consider to be substantially deficient, we rely on best information available. Therefore, we used the highest rate provided in the petition for this class or kind of merchandise as best information available.

Tehnoimportexport did provide the requested information with respect to the other class or kind of merchandise subject to investigation, *e.g.*, ball bearings. The calculation of our margin for ball bearings is detailed below.

United States Price

All sales from Tehnoimportexport were made directly to unrelated parties prior to importation into the United States. Therefore we based the United States price on purchase price, in accordance with section 772(b) of the Act.

We calculated the pruchase price for ball bearings based on the f.o.b. price to unrelated purchasers. We made deductions from purchase price, were appropriate, for foreign inland freight in accordance with section 772(d)(2) of the Act. In *Final Determination of Sales of Less Than Fair Value: Carbon Steel Wire Rod From Poland* (49 FR 29434, July 20, 1984), it was determined that inland freight incurred in a state-controlled economy should be based on similar charges in a non-state-controlled economy. Because information on these charges was not available for Yugoslavia, the surrogate country chosen for purposes of these investigations (*see* Foreign Market value section of this notice), we used the freight expenses reported as actually incurred in Romania as the best information available.

Foreign Market Value

As a result of our determination that Romania has a state-controlled economy (*see* "Fair Value Comparison" section of this notice), section 773(c) of the Act requires us to use prices or the constructed value of "such or similar merchandise in a non-state-controlled economy country." Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a country without a state-controlled economy at a stage of economic development comparable to that with a state-controlled economy.

After an analysis of countries producing antifriction bearings, we determined that Brazil, Mexico, Portugal, the Republic of Korea, and Yugoslavia would be the most appropriate surrogate countries. We sent questionnaires requesting assistance in these investigations to producers of antifriction bearings in Mexico, Portugal, the Republic of Korea, and Yugoslavia, but to date, no affirmative responses have been received. We did not send questionnaires to any companies located in Brazil since all identified Braxilian Companies were related to other antifriction bearing companies currently under investigation. It has been Departmental practice not to request surrogate information from companies that are related to other companies already under investigation due to the possible skewing of data being provided for purposes of determining foreign market value. *See, Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unifinished, From the Socialist Republic of Romania* (52 FR 17433, May 8, 1987). We will continue our attempts to obtain and verify surrogate company data prior to the final determinations.

Since we were unable to obtain any price data from the potential surrogate companies in comparable economies, we used the factors of production

valued in a comparable economy as the basis of foreign market value, as provided for in 19 CFR 353.8(c). We added U.S. packing to the constructed value, in accordance with section 773(e)(C) of the Act. We calculated constructed value based on the factors of production reported by Tehnoimportexport on behalf of the Romanian producers which account for 100 percent of the exports to the United States of the subject merchandise. We used best information available, in accordance with section 776(c) of the Act, for valuing the factors of production. Were possible, best information available was obtained from publicly available sources in Yugoslavia. We chose Yugoslavia as the surrogate county for purposes of valuation of the factors of production because Yugoslavia's level of economic development most closely approximates Romania's own level of economic development. We derived the value of labor costs based on themetal processing industry as provided by the U.S. Embassy in Yugoslavia.

Where public information was not available in Yugoslavia, we used the following data provided by respondent for the valuation of factors as best information available: the prices for steel used in the manufacture of the outer and inner rings and the cage portion of bearings were based on the value of the steel entering the United States; the prices for steel used in the manufacture of the roller and ball portions of bearings were based on the value of the steel in the European market; the values of methane gas and water were based on values in the Mexican market; the value of scrap was based on the average value of scrap as per the *American Metal Market;* the value of electricity was based on prices in the Yugoslavian market; and the value of factory overhead was derived as a percentage of the total manufacturing expenses incurred by Tehnoimportexport. We used the statutory minimum of ten percent of the sum of material and production costs for general, sales and administrative expenses and the statutory minimum of eight percent for profit.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Roomania. Section 773(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reaonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United Sates or elsewhere of the class or kind of merchandise which is the subject of the invlestigation; or

(ii) the person by whom, or for those account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject to the investigation of less than iuts fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data.

Tehnoimportexport has failed to provide the Department with adequate information upon which to base a determination. Therefore, as best information available, we are assuming that imports from Tehnoimportexport have been massive over a relatively short period of time for ball and spherical roller bearings. Therefore, we find that the requirements of section 733(e)(1)(B) are met for the above company and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Romanian manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] Since the estimated margins for Tehnoimportexport exceed 25 percent, we find that the requirements of section 733(e)(1)(A) are met for this company with respect to both classes or kinds of merchandise. Therefore, given that we preliminarily determine that imports have been massive over a relatively short period, and that the margins calculated for both ball and spherical roller bearings exceed 25 percent, we preliminarily determine that critical circumstances exist.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Romania, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. Because we have preliminarily determined that critical circumstances exist with respect to entries of the subject merchandise from Romania, (*see,* the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Romania exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until

further notice. The weighted-average margins are as follows:

Weighted-Average Margin Percentage	
Ball bearings:	
Tehnoimportexport	46.91
All others	46.91
Spherical roller bearings:	
Tehnoimportexport	28.10
All others	28.10

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (20 the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following *Harmonized Tariff Schedule* (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88–25795 Filed 11–8–88; 8:45 am]

BILLING CODE 3510-DS-M

[A–427–801]

Preliminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from France are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from France as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Mary S. Clap, Carole Showers, or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–0161, 377–3965, 377–3217, or 377–2239, repectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from France (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to INA Roulements S.A. (INA); SKF Compagnie d'Applications Mecaniques S.A. (SKF); and Societe Nouvelle de Roulements (SNR). These companies account for a substantial portion of exports of the subject merchandise from France to the United States during the period of investigation. The remaining sections of the questionnaire were inssued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see,* "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from France. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from France.

After review of this additional data, we determined that petitoiner's LTFV allegations were adequate for each of the five classes or kinds of the subject merchandise. However, since plain bearings enter the United States under a basket TSUSA category, we are unable to definitively establish whether plain bearings were imported from France during the period of investigation. In addition, we are unable to specifically identify any French exporters of plain bearings to the United States. Therefore, we have preliminarily determined that plain bearings from France are not being, or are likely to be, sold in the United States at less than fair value. We will continue to attempt to establish whether plain bearings from France were imported and attempt to identify any French exporters of plain bearings to the United States during the period of investigation for purposes of our final determination.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see,* "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases [(*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985)], the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of the Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of

customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialists at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with all product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38(a), the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memoradum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from France. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales below cost allegations were deficient becasue they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-speicific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market sales below the COP.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that a sufficient company-specific allegation has been provided with respect to SKF ball bearings. Therefore, the Department has reinstated a COP investigation for this product only.

Voluntary Respondents

On July 1, 1988, we issued questionnaires to companies which had expressed an interest in submitting voluntary responses in these investigations. However, no responses were received.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the

matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind or merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisions of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). It those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from France to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For those sales where the sale to the first unrealted customer took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight and insurance, brokerage and handling (which inlcuded marine insurance, ocean freight, U.S. inland freight and insurance, and containerization), and U.S. duty in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for warranty expenses, credit, and other direct selling expenses incurred in the United States and France, U.S. indirect selling expenses, and non-U.S. indirect selling expenses, pursuant to sections 772(e)(1) and (2) of the Act.

For the following expenses, INA used the same allocation rates for U.S. sales of merchandise from INA–FRG, INA-France and INA–UK: brokerage and handling, foreign inland freight, foreign inland insurance, packing and non-U.S. selling expenses. The Department has requested that INA calculate separate allocation rates, by country, for these charges. Also, INA has calculated its foreign inland freight, ocean freight and packing based upon value rather than weight or volume. We have requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rates as the best information available.

B. *SKF:* SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, inland freight, marine insurance, ocean freight, and U.S. duty, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, "other expenses," repacking in the United States, technical service expenses, warranty expenses, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

SKF reported a minimal amount of purchase price sales during the POI; however, SKF did not report complete sales data for these transactions. For both these reasons, we did not include any purchase price sales in our calculation of United States price.

SKF notified us that approximately three percent of its reported U.S. sales of ball bearings were produced in a country other than France. SKF claims that although it is impossible for them to separate sales of this merchandise from that produced in France, United States prices of multiple-sourced products are comparable. While we will carefully examine this issue at verification, we have included all reported sales in our calculation of United States price as best information available. SKF also notified us that all reported sales of a certain type of bearing were actually produced in Spain. We deleted all sales of this product from our calculations.

SKF claimed that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

C. *SNR:* SNR reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See* "Alternative Reporting Requirements" section of this notice) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SNR's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions for advertising, commissions, credit, technical services, as well as adjustments for indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

SNR calculated credit expense based on the average number of days accounts receivable were outstanding. We have recalculated credit expense based on the actual number of days from shipment to payment.

For certain transactions, no amounts were reported for brokerage and handling, packing, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, U.S. inland freight, and indirect non-U.S. selling expenses. As best information available, we found the average of each of these expenses and compared it to the average gross price reported. The resultant percentages were then applied, individually, to the gross price for each transaction in which these expenses were not reported.

II. Spherical Roller Bearings

SKF: SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice). Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP for spherical roller bearings based on the packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP for cylindrical roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

B. *SNR:* SNR reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See* "Alternative Reporting Requirements" section of this notice) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SNR's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP for needle roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales. The calculation of foreign market value for each respondent is detailed below.

I. Ball Bearings

A. *INA:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and home market packing. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we deducted credit expenses from home market price. We also deducted indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the product sold in the United States, no adjustments for physical differences in merchandise were required.

INA included advertising and technical expenses in the claim for indirect selling expenses. It failed, however, to provide an itemized breakdown for the remainder of the indirect selling expenses claimed. Therefore, we have disallowed all indirect selling expenses, except for advertising and technical expenses, for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

INA calculated its inland freight and packing allocations based upon value rather than weight or volume. We have requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (*i.e.*, by weight, volume, etc.) For purposes of this preliminary determination, we have accepted INA's allocation rates as the best information available.

B. *SKF:* We calculated foreign market value based on f.o.b. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and home market packing, and cash discounts and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for advertising expenses, credit, and warranty expenses. We also deducted certain indirect selling expenses in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparions are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SKF's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of the indrect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

SKF claimed technical service expenses as a direct selling expense. However, that claim was not adequately supported and, therefore, we treated these expenses as indirect selling expenses.

C. *SNR:* We calculated foreign market value based on packed, ex-works prices to unrelated customers. We made deductions from the home market price, where appropriate, for packing and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, were appropriate, for credit. We also made an adjustment to home market price for indirect selling expenses in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SNR calculated credit expense based on the average number of days for invoicing to payment. We have recalculated credit expense based on

the reported number of days from shipment to payment.

SNR's response was ambiguous as to when inland freight and inland insurance charges were included in the reported gross unit price. Because of this ambiguity, we have not deducted these charges from the home market price for purposes of these determinations.

II. Spherical Roller Bearings

SKF: We calculated foreign market value for spherical roller bearings based on f.o.b. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *INA:* We calculated foreign market value for cylindrical roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *SNR:* We calculated foreign market value based on packed, ex-works prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: We calculated foreign market value for needle roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

Currency conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from France, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except for entries of needle roller bearings from INA, in accordance with section 733(d)(1) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise form France exceeds the United States price, as shown below. Needle roller bearings from INA are not included in that determination since the weighted-average margin is *de minimis*. This suspension of liquidation will remain in effect until further noitice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
INA	65.80
SKF	90.42
SNR	63.77
All others	84.07
Spherical roller bearings:	
SKF	24.84
All others	24.84
Cylindrical roller bearings:	
INA	79.52
SNR	22.60
All others	78.59
Needle roller bearings:	
INA	[1].48
All others	[1].48
Plain bearings: All manufacturers/producers/exporters	0

[1] *4De minimis.*

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published to section 733(f) of the Act (19 U.S.C. 1673(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted on Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger unis, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.) such parts are included *if:* (1) They have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

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[A-549-801]

Preliminary Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that ball bearings and parts thereof from Thailand are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of ball bearings and parts thereof from Thailand. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Thailand as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Eleanor Shea, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-2438 or 377-0184.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that ball bearings and parts thereof (hereinafter referred to as ball bearings or the subject merchandise) from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b)(the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to imports of ball bearings from Thailand, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Thailand (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented section A of the antidumping duty questionnaire to NMB Thai, Ltd. and Pelmec Thai, Ltd. (NMB/Pelmec). These are related companies and account for a substantial portion of exports of the subject merchandise from Thailand to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice.) In light of this decision, the Department re-examined the sufficiency of petititoner's less than fair value (LTFV) allegations for each class or kind of merchandise from Thailand. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We

determined that petitioner submitted insufficient information supporting the claim of LTFV sales of spherical roller bearings, cylindrical roller bearings, needle roller bearings, and plain bearings from Thailand. Accordingly, on September 26, 1988, we rescinded our initiations of antidumping duty investigations on these classes or kinds of merchandise from Thailand (53 FR 39327, October 6, 1988).

On July 15, 1988, the Department detemined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988.

On September 28, 1988, we issued a detailed supplemental questionnaire requesting, among other information, that respondent revise its product matching criteria methodology in accordance with the instructions outlined in the original questionnaire. On October 7, 1988, respondent submitted a narrative response to this supplemental questionnaire, as well as revised computer tapes on home market and U.S. sales data and constructed value information. On October 17, 1988, respondent submitted again revised computer tapes on home market and U.S. sales. All of these responses were received too late to be fully analyzed and used for purposes of this preliminary determination.

In the notice of initiation (53 FR 15076, April 27, 1988), we stated that we would investigate sales at less than fair value pursuant to the special rule for multinational corporations, as provided in Section 773 (d) of the Act (*see*, 19 U.S.C. 1677b(d)). One of the critieria for invoking the special rule for multinational corporations is that home market sales do not provide an adequate basis for comparison with U.S. sales of the subject merchandise. *See*, 19 U.S.C. 1677b(d)(2).

Based on information in the questionnaire responses submitted on July 18, and September 6, 1988, we determined that the home market in Thailand is viable based on the criterion set forth in 19 CFR 353.4, and that, as a result, home market sales do provide an adequate basis for comparison with the sales of the merchandise to the United States.

Therefore, we have determined that the special rule for multinational coroporations does not apply with respect to sales of the subject merchandise from Thailand. For this reason, on October 18, 1988, we issued a letter to petitioner stating that the Department would not require the respondent to provide Japanese home market price information pursuant to section 773(d) of the Act. A memorandum dated October 17, 1988 outlining our analysis of this issue is on file in the Central Records Unit.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determination.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As will the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the

Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete descriptioin of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38, the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedure outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from Thailand. At that time, we also considered petitioner's allegation that sales in the home market were being made at prices below the cost of production (COP). However, because we stated in the notice of initiation that we would investigate the allegation of sales at LTFV pursuant to the special rule for multinational corporations (*see*, "Case History" section of this notice), we determined that it would be inappropriate to initiate an investigation of sales at below the COP in Thailand. Subsequent to our notice of initiation, however, we determined that the Thai home market is viable and that, as a result, the special rule for multinational corporations does not apply to this case.

As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents involved in the concurrent antidumping duty investigations of antifriction bearings from eight other countries objected to the Department's decision to initiate COP investigations in those cases. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales-below-cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit.

On September 22, 1988, petitioner submitted a new allegation that home market sales of ball bearings are being made below the COP. However, petitioner based this allegation on cost and price information for products sold only to related parties in the home market. Because petitioner failed to base its allegation on information submitted by respondent on sales to unrelated parties (*i.e.*, arm's-length transactions), we have determined that petitioner's COP allegation is insufficient.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or

similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*See*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of ball bearings from Thailand to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has failed to respond to our questionnaire, has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of this preliminary determination, we relied on best information available. For this preliminary determination, we have used best information available for the calculation of foreign market value, as discussed in detail below.

United States Price

For all U.S. transactions, the sale to the first unrelated purchaser took place after importation into the United States; therefore, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

We calculated ESP based on the packed, f.o.b. U.S. shipping point prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for discounts, freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for advertising, commissions, U.S. credit expenses, warranty expenses, and all indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

Respondent claimed warranty as an indirect selling expense; however, this claim was not adequately supported. Therefore, for purposes of this preliminary determination, we have treated the warranty expense as a direct selling expense in the U.S. market.

The amended response submitted on October 7, 1988, contained revised information on discounts, freight forwarding expenses, inventory carrying costs, and new information on U.S. indirect selling expenses incurred in Thailand and Japan. Although the October 7, 1988 computer tapes were not submitted in time to be used for purposes of this preliminary determination, we have incorporated the new and revised information on certain charges and adjustments wherever possible for purposes of our analysis.

Foreign Market Value

In order to meet the minimum reporting requirement of 33 percent (*see*, "Alternative Reporting Requirements" section of this notice), NMB/Pelmec had to report both identical and similar home market matches. However, in the response submitted on September 6, 1988, NMB/Pelmec failed to follow the instructions outlined in the questionnaire to make its selection of most similar home market product comparisons (*see*, "Such or Similar Comparisons" section of this notice). Furthermore, applying its own product matching methodology, NMB/Pelmec was unable to provide a sufficient number of home market products as matches to the top 33 percent by volume of U.S. sales. Therefore, in its September 6, 1988 response, NMB/Pelmec also included constructed value data.

On September 28, 1988, we issued a supplemental questionnaire to NMB/Pelmec, requiring that it report its home market matches in accordance with the Department's instructions outlined in the questionnaire. On October 7, 1988, respondent submitted a revised response; however, this information was received too late to be fully analyzed and used for purposes of this preliminary determination.

Althought the respondent provided information on some identical matches in its September 6, 1988 response we were unable to use these matches in our analysis because all sales of identical product was made to related parties in the home market. Respondent was unable to demonstrate that these sales were arm's-length transactions because no sales of the same merchandise in the home market were made to unrelated parties.

Therefore, we had no home market sales information which could be used for purposes of our fair value comparisons. Accordingly, we had to rely on best information available as required by section 776(c) of the Act. For purposes of this preliminary determination, we determined that respondent's constructed value data submitted on September 6, 1988 are the best information available to use for foreign market value.

In calculating constructed value, we used the respondent's submission for material and fabrication costs, and we revised the submitted general and administrative expenses using the company's latest available consolidated financial statement. This is in accordance with our usual methodology of using the general, administrative, and interest expenses as they appear in the company's consolidated financial statements. The selling expenses reported by respondent could not be used for the calculation of constructed value because we did not have a way to segregate these in the selling, general and administrative expenses (SG&A) reported in the company's consolidated financial statements. Since the reported home market profit was less than eight percent of the sum of the costs of materials, fabrication, and general expenses, we used the statutory minimum of eight percent.

We made deductions from constructed value, where appropriate, for inland freight and credit expenses. We also made an adjustment to constructed value for indirect selling expenses, in accordance with 19 CFR 353.159(c). As best information available, for direct and indirect selling expenses, we calculated a weighted-average of these expenses as they were reported in the home market sales database. Since the constructed value data did not include packing, we added U.S. packing to the constructed value for comparison with United States price.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Thailand. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in this investigation that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterrring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked respondents to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determination on company-specific data. Based on our analysis of the monthly shipment data submitted by NMB/Pelmec, we have preliminarily found that there is no reasonable basis to believe or suspect that imports of ball bearings from NMB/Pelmec have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) have not been met with respect to ball bearings from NMB/Pelmec.

Since we do not find that there have been massive imports of ball bearings from NMB/Pelmec, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that it was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of ball bearings from NMB/Pelmec.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Thailand, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Thailand exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
NMB/Pelmec	1.34
All others	1.34

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of Investigation

The products covered by this investigation, ball bearings, mounted or unmounted, and parts thereof, are defined as follows:

Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA) item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items

681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this (TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized System (HS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This investigation covers all of the subject ball bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of the investigation. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if:* (1) They have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts are *not* covered by this investigation are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-25798 Filed 11-8-88; 8:45 am

BILLING CODE 3510-DS-M

[A-559-801]

Preliminary Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that ball bearings and parts thereof from Singapore are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Singapore as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Eleanor Shea, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-2438 or 377-0184.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that ball bearings and parts thereof (hereinafter referred to as ball bearings or the subject merchandise) from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred: On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Singapore (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaire to NMB Singapore and Pelmec Industries, Ltd. (NMB/Pelmec). These companies are related and account for a substantial portion of exports of the subject merchandise from Singapore to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due of June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice.) In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Singapore. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner submitted insufficient information supporting the claim of LTFV sales of spherical roller bearings, cylindrical roller bearings, needle roller bearings, and plain bearings from Singapore. Accordingly, on September 26, 1988, we rescinded our initiations of antidumping duty investigations on these classes or kinds of merchandise from Singapore (53 FR 39327, October 6, 1988).

On July 15, 1988, the Department that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988.

In our original questionnaire, we requested that respondent report third country sales information if the home market was not viable. NMB/Pelmec did not provide this information. Based on information provided in the September 6, 1988 questionnaire response, we determined that the home market in Singapore is not viable. Accordingly, on September 23, 1988, we issued a letter to NMB/Pelmec requesting third country sales data, and on September 29, 1988, we issued a detailed supplemental questionnaire. On October 3, 1988, respondent submitted constructed value information, as well as arguments challenging the Department's finding that the home market is not viable. On October 7, 1988, respondent submitted revised home market and U.S. sales data, as well as incomplete third country data. Computer tapes containing revised their country sales data were submitted on October 11, 1988. Finally, on October 17, again revised home market, U.S. and third country sales data were submitted. However, all of these responses were submitted too later to be fully analyzed and used for purposes of this preliminary determination.

On September 22, 1988, petitioner submitted a letter requesting that we obtain the resale prices of Minebea Co., Ltd., the Japanese parent company of NMB/Pelmec, for the products produced in Singapore pursuant to the special rule for multinational corporations, as provided for in section 773(d) of the Act (*see*, 19 U.S.C. 1677b(d)). One of the criteria for invoking the special rule for multinational corporations is that the foreign market value of such or similar merchandise produced outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the country of exportation. Petitioner did not provide pricing information to demonstrate that the foreign market value of such or similar merchandise in Japan is higher than the foreign market value of such or similar merchandise produced in Singapore. Therefore, there is no basis

at this time to pursue the analysis provided for under section 773(d) of the Act.

For this reason, on October 18, 1988, we issued a letter to petitioner stating that the Department would not require respondent to provide Japanese home market price information pursuant to section 773(d) of the Act. A memorandum dated October 17, 1988, outlining our analysis of this issue is on file in the Centeral Records Unit.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that these are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, or October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determination.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to this investigation, see Appendix I attached to this notice

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five serarate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Sperical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursunt to 19 CFR 353.38, the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the ecormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of

products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the responsent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from Singapore. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See,* "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp.* v. *United States,* 575 F. Supp. 1277 (CIT 1983) (*Al Tech),* these repondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Because we rescinded the initiation of LTFV investigations with respect to spherical roller bearings, cylindrical roller bearings, needle roller bearings, and plain bearings from Singapore (*See,* "Case History" section of this notice), petitioner submitted a new allegation of home market below the COP with respect to ball bearings only. Petitioner submitted revised data on sales at below the COP in Singapore on September 27, 1988. Nevertheless, because we have found that Singapore home market is not vaiable (*See,* "Such or Similar Comparisons" section of this notice), there is no basis to conduct a COP investigation of the Singapore home market.

Because we requested that respondent provide third country sales information, petitioner then submitted on October 17, 1988, an allegation that sales to the third country (*i.e.,* Japan) are being made at below the COP. However, there were significant omissions in the third country sales data on which petitioner relied to make this COP allegation. Furthermore, all of the third country sales responses were submitted too late to be analyzed fully and used for any purpose, including an analysis of sales below cost, for these preliminary determinations. If petitioner makes an allegation that sales to the third country are below the COP based on respondent's revised response, we will consider that allegation when it is submitted.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan,* (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

In the September 6, 1988 questionnaire response, respondent failed to provide calculations of home market viability as requested in the original questionnaire. According to the sales figures reported in the response, and following the methodology outlined above for determining home market viability, we found that the home market sales were not of a sufficient quantity to provide an adequate basis for foreign market value. Therefore, on September 23, 1988, we issued a letter to NMB/Pelmec requesting third country sales data. We received a response to this request on October 7, 1988, which contained numerous deficiencies and missing data. Revised third country sales data were submitted on October 17, 1988. However, all of this information was submitted too late to be fully analyzed and used for purpose of this preliminary determination.

With respect to our product comparisons and pursuant to our alternative preporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see,* "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of ball bearings from Singapore to the United States were made at less than fair value, we compared the United Staes price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has failed to

respond to our questionnaire, has submitted a response which we consider to be substantially deficieint, or has submitted information too late to be considered for purposes of these preliminary determinations, we relied on best information available. Those instances where we have used best information available are fully described below.

United States Price

For all U.S. transactions, the sale to the first unrelated purchaser took place after importation into the United States; therefore, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

In order to meet the minimum reporting requirements of 33 percent (*see*, "Alternative Reporting Requirements" section of this notice), NMB/Pelmec had to report both identical and similar home market matches. However, in the response submitted on September 6, 1988, respondent failed to follow the instructions outlined in the questionnaire to make its selection of most similar home market comparisons to U.S. sales. In addition, in the original questionnaire, we requested that respondent provide third country sales information where the home market is not viable. NMB/Pelmec did not provide this information in its September 6, 1988 response.

On October 3, 1988, respondent voluntarily submitted constructed value information, as well as arguments challenging the Department's finding that the home market is not viable. On October 7, 1988, respondent submitted revised home market and U.S. sales information amending its product matches, as well as incomplete third country sales data. Additional information on third country sales was submitted on October 11, 1988. Again revised home market, U.S. sales and third country sales data were submitted on October 17, 1988. All of these responses were submitted too late to be fully analyzed and used for purposes of these preliminary determinations. Therefore, we had to rely on best information available as required by section 776(c) of the Act. For purposes of this preliminary determination, we have determined that respondent's September 6, 1988 response is the best information available to the extent that respondent reported identical product matches. Because respondent failed to follow our product comparison criteria for selection of similar home market merchandise, we had to use best information available for those reported sales involving similar matches. As best information available, we have used the highest margin alleged in the petition for ball bearings from Singapore.

For the U.S. sales with identical home market matches, we based our analysis on price-to-price comparisons. For these sales, we calculated ESP based on the packed, f.o.b. U.S. shipping point prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d) of the Act. We also made deductions, where appropriate, for advertising, discounts, U.S. credit expenses, warranty expenses, and all indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

The amended response submitted on October 7, 1988, contained revised information on discounts, freight forwarding expenses, inventory carrying costs, home market credit expenses, and new information on U.S. indirect selling expenses incurred in Singapore and Japan. As stated above, the October 7, 1988 computer tapes were not submitted in time to be used for purposes of this preliminary determination; however, we incorporated the new and revised information on certain charges and adjustments wherever possible for purposes of our analysis.

To calculate the weighted-average margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin calculated using NMB/Pelmec's sales information for identical matches with the margin alleged by petitioner until we reached 33 percent coverage of U.S. sales by volume.

Foreign Market Value

For those home market sales used in our price-to-price comparisons, we calculated foreign market value based on the packed, free-to-customer-door prices to unrelated customers in the home market. We made deductions from home market price, where appropriate, for inland feight. In order to adjust for differences in packing costs between the U.S. and home markets, we deducted home market packing expenses from the home market price and added U.S. packing costs, in accordance with sections 773(a)(1) and 773(a)(4)(B) of the Act.

We made further deductions from home market price, where appropriate, for credit expenses and indirect selling expenses, in accordance with 19 CFR 353.15(c).

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

We will verify the information used in making our final determination in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Singapore exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Ball bearings	Weighted-average margin percentage
NMB/Pelmec	73.55
All others	73.55

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or

45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of Investigation

The products covered by this investigation, ball bearings, mounted or unmounted, and parts thereof, are defined as follows:

Ball Bearings, Mounted or Unmounted, and Parts Thereof

These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized System (HS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This investigation covers all of the subject ball bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of the investigation. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by this investigation are those where the part will be subject to heat treatment after importation.

[FR Doc. 88–25796 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–804]

Preliminary Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminary determine that antifriction bearings (other than tapered roller bearings) and parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that cirtical circumstances exist with respect to imports of certain classes or kinds of antifriction bearings (other than tapered roller bearings) and parts thereof from Japan. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Japan as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Rick Herring, or Eleanor Shea, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–2438, 377–0167, or 377–0184, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Japan, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Japan (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to Koyo Seiko Co., Ltd. (Koyo); Minebea Co., Ltd. (Minebea); Nachi-Fujikoshi Corp. (Nachi); Nippon Seiko K.K. (NSK); and NTN Toyo Bearing, Co., Ltd. (NTN). These companies account for a substantial portion of exports of the subject merchandise from Japan to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice.) In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Japan. the Department afforded petitioner an

opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from Japan.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice).

Accordingly, response deadlines were extended several times, with the final due date for response being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the peition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition.

Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. as with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 Fr 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we receive numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings).
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings).
3. Cylindrical Roller Bearings, Mounted or Unmounted, an Parts Thereof (Cylindrical Roller Bearings).
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings).
5. Plain Bearings, Mounted or Unmounted, an Parts Thereof (Plain Bearings).

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38, the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from Japan. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp.* v. *United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market sales below the COP.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to the following:

I. Ball Bearings

A. Koyo.
B. Nachi.
C. NSK.
D. NTN.

II. Spherical Roller Bearings

A. Koyo.
B. Nachi.
C. NSK.
D. NTN.

III. Cylindrical Roller Bearings

A. NSK.
B. NTN.

IV. Needle Roller Bearings

A. NTN.

Therefore, the Department has reinstated COP investigations for these companies on the classes or kinds of AFBs listed above.

Voluntary Respondents

On July 15, 1988, we issued questionnaires to four companies which had expressed an interest in submitting a voluntary responses in these investigations. However, we received no voluntary responses, and none has been considered for the purposes of these investigations.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home markets products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the

Act, where a company has failed to respond to our questionnaire, has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of these preliminary determinations, we relied on best information available. Those instances where we used best information available are fully described below.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;

2. This was a customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *Koyo:* In order to meet the minimum reporting requirement of 33 percent (*see*, "Alternative Reporting Requirements" section of this notice), Koyo has to report both identical and similar home market matches and constructed value for certain products with no home market matches. However, for certain U.S. sales, it made comparisons to identical or similar home market products which were only sold to related parties in the home market. Since Koyo had no sales of these products to unrelated parties in Japan (*see* discussion of sales to related and unrelated parties in the "Foreign Market Value" section of this notice), and did not provide constructed value information in sufficient time to analyze for these preliminary determinations, we had to use best information available to calculate the margins for those U.S. sales. As best information available, we used the highest margin alleged in the petition for this class or kind of merchandise.

For those U.S. sales where we had identical or similar home market sales to unrelated parties, we calculated ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. We made deductions from USP, where appropriate, for foreign inland freight, export brokerage, ocean freight, marine insurance, import brokerage, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions, where appropriate, for commissions, credit expenses, inspection fees, quality control expenses, repackaging in the U.S., warranties, and all indirect selling expenses pursuant to section 772(e) (1) and (2) of the Act.

Koyo incorrectly allocated certain movement charges on the basis of sales value, rather than weight. For the preliminary determinations, we are using the reported charges as best information available.

Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of Koyo's total sales to the United States, we are disregarding these sales for purposes of these determinations.

To calculate the estimated weighted-average margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin calculated using Koyo's home market sales to unrelated parties with the margin alleged by petitioner until we reached 33 percent coverage of U.S. sales by volume.

B. *Minebea:* Because Minebea failed to submit a response with respect to ball bearings, we used best information available in accordance with section 776(c) of the Act. For purposes of these preliminary determinations, best information available is the highest rate alleged in the petition for ball bearings from Japan.

c. *Nachi:* Nachi reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market (*see*, "Alternative Reporting Requirements" section of this notice). Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight (which included inland insurance), export brokerage (which included containerization), ocean freight, air freight, marine and air insurance, import brokerage, U.S. duty, and U.S. inland freight (which included inland insurance), in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions from ESP, where appropriate, for credit expenses, advertising, inspection fees, commissions, technical services (expenses incurred in testing bearings), and all indirect selling expenses, pursuant to section 772(e) (1) and (2) of the Act.

D. *NSK:* NSK reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market (*see*, "Alternative Reporting Requirements" section of this notice). Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight, foreign inland insurance, export brokerage, ocean freight, marine insurance, U.S. brokerage, U.S. duty, and U.S. inland frieght, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions, where appropriate, for credit expenses, inspection fees, and all indirect selling expenses, pursuant to section 772(e) (1) and (2) of the Act.

NSK omitted its product liability premium expenses for U.S. sales on the computer tape used for these preliminary determinations. Based on information contained in a revised narrative response, we included this expense in our calculation of U.S. price.

for certain of its sales, NSK failed to report inventory carrying costs. Where this expense was omitted, we calculated inventory carrying costs based on the other information in the response.

NSK incorrectly reported charges incurred in yen by converting these charges to U.S. dollar amounts. Certain movement charges were also incorrectly allocated on the basis of sales values, rather than weight. For the preliminary determinations, we are using the reported charges as best information available.

Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NSK's total sales to the United States, we are disregarding these sales for purposes of these determinations.

E. *NTN:* In order to meet the minimum reporting requirement of 33 percent (*see*, "Alternative Reporting Requirements" section of this notice), NTN had to report both identical and similar home market matches which we used in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., and delivered price to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight, foreign inland insurance, brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for credit expenses, inspection fees, commissions, and all indirect selling expenses pursuant to sections 772(e) (1) and (2) of the Act.

NTN omitted the Japan Bearing Inspection Fee from the sales tape used for these preliminary determinations. Based on information submitted in a narrative response, we have included that expense in our calculation of U.S. price. NTN also failed to report an amount for U.S. duty on certain sales; for such sales we have calculated an amount for U.S. duty.

NTN incorrectly reported charges incurred in yen by converting these charges into U.S. dollar amounts. Certain movement charges were also incorrectly allocated on the basis of sales value, rather than weight. For these preliminary determinations, we are using the reported charges as best information available.

Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NSK's total sales to the United States, we are disregarding these sales for purposes of these determinations.

II. Spherical Roller Bearings

A. *Koyo:* With respect to the minimum reporting requirement of 33 percent, Koyo reported U.S. sales with identical home market matches. However, as described above for ball bearings, certain of the home market products were sold only to related parties. Therefore, as described above for ball bearings, we had to use both best information available and price-to-price comparisons for purposes of calculating the estimated weighted-average margin.

For the U.S. sales used in price-to-price comparisons, we calculated ESP based on the packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *Nachi:* Nachi reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

C. *NSK:* In order to meet the minimum reporting requirement of 33 percent, NSK reported identical home market matches. However, for certain U.S. sales, it made comparisons to identical home market product which were only sold to related parties in the home market. Since NSK reported no sales of these products to unrelated parties in Japan (*see* discussion of sales to related and unrelated parties in the "Foreign Market Value" section of this notice), we had to use best information available to calculate the margins for those U.S. sales. As best information available, we used the highest margin alleged in the petition for spherical roller bearings.

For those U.S. sales where we had identical home market sales to unrelated parties, we calculated ESP based on the packed, delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

To calculate the estimated weighted-average margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin calculated using NSK's home market sales to unrelated parties with the margin using data alleged by petitioner until we reached 33 percent coverage of U.S. sales by volume.

D. *NTN:* NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *Koyo:* With respect to the minimum reporting requirement of 33 percent, Koyo had to report both identical and similar home market matches. With respect to these home market sales, the same circumstances exist for cylindrical roller bearings as for ball bearings described above. Therefore, as described above for ball bearings, we had to use both best information available and price-to-price comparisons for purposes of calculating the estimated weighted dumping margin. For best information available, we used the margin calculated in the price-to-price comparisons since this margin was higher than the margin alleged in the petition.

We calculated ESP based on the packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *Nachi:* Nachi reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings, except that there were no purchase price sales of cylindrical roller bearings.

C. *NSK:* NSK reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used these sales in our price-to-price comparisons.

We calculated ESP based on the packed, delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

D. *NTN:* NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the

home market. Therefore, we have used these sales in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b. and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball barings.

Because of the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NTN's total sales to the United States, we are disregarding these sales for purpose of these determinations.

IV. Needle Roller Bearings

A. *Koyo:* With respect to the minimum reporting requirement of 33 percent, Koyo reported U.S. sales with identical home market matches. However, as described above for ball bearings, certain of the home market products were sold only to related parties (*see* discussion of sales to related and unrelated parties in the "Foreign Market Value" section of this notice). In addition, Koyo reported that there were no similar home market matches for a significant percentage of U.S. sales, nor did Koyo provide constructed value information in sufficient time to be analyzed for these preliminary determinations. Therefore, as described above for ball bearings, we had to use both best information available and price-to-price comparisons for purposes of calculating the estimated weighted-average dumping margin.

For the sales used in our price-to-price comparisons, we calculated ESP based on the packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *NTN:* In order to meet the minimum reporting requirement of 33 percent, NTN had to report both identical and similar home market matches which we used in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings. We also used purchase price sales in our calculation of U.S. price since the volume of such sales were a significant amount of total U.S. sales of needle roller bearings. We calculated purchase price based on the packed, f.o.b., Japanese warehouse price to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for foreign inland freight and foreign inland insurance, in accordance with section 772(d)(2) of the Act.

V. Plain Bearings

A. *Minebea:* In order to meet the minimum reporting requirement of 33 percent, Minebea had to report both identical and similar home market matches. However, in the response submitted on September 6, 1988, Minebea failed to follow the instructions outlined in the questionnaire to make its selection of most similar home market comparisons to U.S. sales (*see*, "Such or Similar Comparisons" section of this notice). In the amended response submitted on October 7, 1988, Minebea corrected its product matches. However, because this information was submitted so late in these investigations, it was not possible to fully analyze the October 7, 1988 narrative responses and the information provided on computer tape for purposes of these preliminary determinations. Therefore, for those U.S. sales involving similar matches, we have used, as best information available in accordance with section 776(c) of the Act, the highest margin alleged in the petition for plain bearings from Japan.

For the U.S. sales with identical home market matches, we based our analysis on price-to-price comparisons. For these sales, we calculated ESP based on the packed, f.o.b. U.S. shipping point prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions from ESP, where appropriate, for advertising, U.S. credit expenses, technical service expenses, warranty expenses, and all indirect selling expenses pursuant to sections 772(e) (1) and (2) of the Act.

The narrative response submitted on October 7, 1988, contained revised information on discounts, freight forwarding expenses, inventory carrying costs, home market credit expenses, and new information on U.S. indirect selling expenses incurred in Japan. As stated above, the October 7, 1988 computer tapes were not submitted in time to be used for purposes of these preliminary determinations; however, based on the narrative response, we incorporated the new and revised information on certain charges and adjustments wherever possible for purposes of our analysis.

To calculate the estimated weighted-average margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin calculated using Minebea's sales information with the margin using data alleged by petitioner until we reached 33 percent coverage of U.S. sales by volume.

B. *NTN:* For plain bearings, NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sole in the home market. Therefore, we have used all U.S. sales with home market identical matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b. and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales to unrelated parties and, where necessary, best information available. The calculation of foreign market value for each respondent is detailed below.

Koyo, Nachi, NSK, and NTN have reported sales to both unrelated and related parties in the home market in making comparisons to U.S. sales. Nachi was the only respondent to notify the Department of its intent to report both unrelated and related party sales and to request that the Department use the related sales in making fair value comparisons. We informed Nachi that, if they chose to report related party sales, such sales would be used in determining foreign market value only if we were satisfied that "such sales are demonstrated * * * to be at prices comparable to those at which such or similar merchandise is sold to persons unrelated to the seller," pursuant to 19 CFR 353.22(b). Furthermore, we informed Nachi that, where home market sales of a comparison product were made only to related parties, the first sale to an unrelated party in the home market had to be reported.

We first learned that Koyo, NSK, and NTN were reporting related party sales when they filed their responses to Section B of our questionnaire. In supplemental questionnaries, we issued the same instructions to these companies as we issued to Nachi.

Nachi, NSK, and NTN have argued that sales to related parties are made at arm's length and that the prices charged to related parties are comparable to those charged to unrelated parties. Koyo has implicitly made this argument since, in its response, Koyo compared U.S. products to the identical or similar products sold in the home market only to related parties. None of the companies, except Nachi, has submitted detailed analyses, on a product-by-

product basis, comparing prices (less discounts, rebates, and credit expenses) of bearings sold in the home market to both related and unrelated parties. Nachi's submission analyzing this issue was received on October 24, 1988, too late to be used for these preliminary determinations. Therefore, for all respondents, we have used only sales in the home market to unrelated parties for the purposes of determining foreign market value.

I. Ball Bearings.

A. *Koyo:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and home market packing. Since U.S. price is based on ESP, we made further deductions from home market price, were appropriate, for home market credit expenses, warranties, and commissions, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. We made further adjustments, where applicable, to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Koyo claimed rebates paid on home market sales as a direct selling expense; however, Koyo allocated the rebates over all home market sales. Since the rebates were allocated over all sales rather than just those sales on which the rebates were paid, we are treating the rebates as indirect selling expenses.

Koyo also incorrectly allocated inland freight by sales value rather than by weight. For the preliminary determinations, we are using the reported charges as best information available.

B. *Minebea:* As described in the "United States Price" section of this notice, we used best information available in accordance with section 776(c) of the Act as the basis for our preliminary determination with respect to ball bearings.

C. *Nachi:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for rebates, inland freight, and home market packing. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, inspection fees, technical services, and advertising, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from the home market price, where appropriate, for home market credit expenses, technical services (expenses incurred in testing bearings), and advertising, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

Nachi made a claim that it incurred direct advertising expenses on its sales to original equipment manufacturers (OEMs). We are treating these expenses as indirect selling expenses since Nachi did not provide sufficient information to demonstrate that the advertising in question is directed to the OEMs' customers.

Nachi claimed personnel expenses incurred when rendering technical services as a direct selling expense. Employee salaries are nonvariable expenses and, as such, are not allowable as direct selling expenses. Therefore, we have treated these personnel expenses as indirect selling expenses.

Nachi made a claim for warehousing expenses. We are treating these expenses as indirect selling expenses rather than as direct expenses since the warehousing expenses were incurred before the date of sale reported by Nachi in its responses.

Nachi also claimed an adjustment for exchange gains or losses on certain purchase price sales. For the preliminary determinations, we are not allowing this adjustment since it appears that the dollar price charged to the U.S. customer under a dollar-denominated contract is not affected. Based on the responses, it appears that only the amount of yen received by Nachi on the sale may change.

D. *NSK:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, and home market packing. Since U.S. price is based on ESP, we made further deductions from home market price, where appropriate, for home market credit expenses and commissions, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

NSK claimed rebates and discounts paid on home market sales as a direct selling expense; however, NSK allocated the rebates and discounts over all home market sales. Since these were allocated over all sales rather than only those sales on which the rebates and discounts were incurred, we are treating the rebates and discounts as indirect selling expenses.

NSK also incorrectly allocated inland freight by sales value rather than by weight. For the preliminary determinations, we are using the reported charges as best information available.

E. *NTN:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for discounts, inland freight and insurance, and home market packing. Since U.S. price is based on ESP, we made further deductions from the home market price, where appropriate, for home market credit expenses, commissions, and royalty expenses, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. We made further adjustments to the home market price, where applicable, to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

NTN incorrectly allocated inland freight by sales value rather than by weight. For these preliminary determinations, we are using the reported charges as best information available.

NTN made a claim for warehousing expenses. We are treating these expenses as indirect selling expenses rather than as direct expenses since the warehousing expenses were incurred before the date of sale reported by NTN in its response.

II. Spherical Roller Bearings

A. *Koyo*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

B. *Nachi*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

C. *NSK*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

D. *NTN*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

III. Cylindrical Roller Bearings

A. *Koyo*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *Nachi*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings when foreign market value was compared to ESP. There were no comparisons to purchase price because there were no purchase price sales of cylindrical roller bearings.

C. *NSK*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were indentical to those described above for ball bearings.

D. *NTN*. For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

IV. Needle Roller Bearings

A. *Koyo:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

B. *NTN:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that for comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses and inspection fees, pursuant to 19 CFR 353.15.

We did not make an adjustment for home market commissions when comparing foreign market value to purchase price sales. NTN did not provide indirect selling expenses incurred on purchase price sales and, therefore, no adjustment could be made pursuant to 19 CFR 353.15(c).

V. Plain Bearings

A. *Minebea:* For those home market sales used in our price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from home market price, where appropriate, for inland freight and home market packing.

We made further deductions from home market price, where appropriate, for home market credit expenses, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For purposes of these preliminary determinations, we have treated the advertising expense as an indirect expense in the home market, as respondent did not provide sufficient information to demonstrate that the expense is a direct selling expense incurred on behalf of its customer's customers.

B. *NTN:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Japan. Section 733(e)(1) fo the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the

Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provisions of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

Therefore, we have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical cricumstances determinations on company-specific data. Because Minebea failed to submit monthly shipment data on ball bearings, we preliminarily determine, as best information available, that Minebea's imports of ball bearings have been massive over a relatively short period of time.

Based on our analysis of the monthly shipment data submitted by the other respondents in these investigations, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of the following classes or kinds of merchandise from the companies listed below have been massive over a relatively short period of time.

I. Ball Bearings

A. Minebea

II. Spherical Roller Bearings

A. Koyo
B. Nachi
C. NSK
D. NTN

III. Cylindrical Roller Bearings

A. NSK

IV. Needle Roller Bearings

A. Koyo

V. Plain Bearings

A. NTN

Therefore, we find that the requirements of section 733(e)(1)(B) are met for the above companies and classes or kinds of merchandise.

For the companies and classes of merchandise listed above, we then examined recent antidumping duty cases and found that there are currently no findings of dumping of the subject merchandise by Japanese manufacturers, producers, or exporters in the United States. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee of the General Agreement on Tariffs and Trade. On July 19, 1984, as set forth in Council Regulation No. 2089/84, the European Economic Community (EEC) imposed antidumping duties on ball bearings with a greatest external diameter of not more than 30 millimeters from Japan. On June 24, 1985, as set forth in Council Regulation No. 1739/85, the EEC imposed antidumping duties on ball bearings with a greatest external diameter of more than 30 millimeters from Japan. On February 5, 1987, as set forth in Council Regulation No. 374/87, the EEC imposed antidumping duties on cast or pressed steel housings fitted with ball bearings from Japan. As this constitutes a history of dumping of ball bearings from Japan, we find that the requirements of section 733(e)(1)(A) are met with respect to ball bearings.

With respect to the remaining four classes or kinds of merchandise, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally, we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. Given the preliminary margins found for Koyo with respect to sales of spherical roller bearings and needle roller bearings, and for NTN with respect to sales of plain bearings, and the fact that these companies sell in the United States through related companies, we find that the requirements of section 733(e)(1)(A) are met for these companies with respect to those classes or kinds of merchandise.

The following chart sets forth our company-specific preliminary determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from Japan.

	Critical circumstances
Ball bearings:	
Koyo	No.
Minebea	Yes.
Nachi	No.
NSK	No.
NTN	No.
All Others	No.
Spherical roller bearings:	
Koyo	Yes.
Nachi	No.
NSK	No.
NTN	No.
All others	No.
Cylinderical roller bearings:	
Koyo	No.
Nachi	No.
NSK	No.
NTN	No.
All others	No.
Needle roller bearings:	
Koyo	Yes.
NTN	No.
All others	No.
Plain bearings:	
Minebea	No.
NTN	Yes.
All others	No.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of this Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Japan, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of those products from those manufacturers, producers, and exporters in Japan where we have preliminarily determined that critical circumstances exist (*see*, the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price, as shown below. This suspension of

liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
Koyo	73.55
Minebea	106.61
Nachi	43.47
NSK	56.32
NTN	25.65
All others	44.76
Spherical roller bearings:	
Koyo	40.18
Nachi	11.20
NSK	12.46
NTN	3.91
All others	9.79
Cylindrical roller bearings:	
Koyo	51.21
Nachi	2.71
NSK	10.69
NTN	3.40
All others	28.86
Needle roller bearings:	
Koyo	128.25
NTN	147.35
All others	129.14
Plain bearings:	
Minebea	225.68
NTN	91.51
All others	217.31

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determiantions, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of These Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA items 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50 8408.99.50.

(2) *Spherical Roller Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA items 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under this TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

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BILLING CODE 3510-DS-M

[A-428-801]

Preliminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of antifriction bearings (other than tapered roller bearings) and parts thereof from the FRG. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from the FRG as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Mary S. Clapp, Carole Showers, or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-0161, 377-3965, 377-3217, or 377-2239, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from the FRG are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from the FRG, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from the FRG (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to FAG Kugelfischer George Schafer KgA (FAG); Georg Muller Nurnberg AG (GMN); INA Walzlager Schaeffler (INA); and SKF Kugellagerfabriken GmbH (SKF). These companies account for a substantial portion of exports of the subject merchandise from the FRG to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from the FRG. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from the FRG.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental and deficiency questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an

investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comment from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows;

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings).

2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings).

3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings).

4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings).

5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings).

This July 13, 1988 decisions memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38, the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from the FRG. At that time, we also initiated an investigation of whether sales in the home markets were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise"; section of this notice.) Accordingly, on July 22,

1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decisions to initiate COP investigations. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decisions, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market sales below the COP.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to the following investigations:

1. Ball Bearings—SKF, FAG, GMN.
2. Spherical Roller Bearings—FAG.
3. Cylindrical Roller Bearings—SKF, INA, FAG.
4. Needle Roller Bearings—SKF, FAG.

Therefore, the Department has reinstated COP investigations for these companies on the classes or kinds of AFBs. listed above.

Voluntary Respondents

On July 1, 1988, we issued questionnaires to companies which had expressed interest in submitting voluntary responses in these investigations. On July 26 and 27, 1988, we received voluntary responses from Maschinenfabrik Joseph Eich KG u. Partner GmbH and ASK Kugellagerfabrik Artur Seyfert GmbH, respectively, producers of certain AFBs in the FRG. These responses contained material deficiencies. Therefore, they were not considered for the purposes of these investigations. Accordingly, the AFBs exported by these producers will be subject to the "All Other" rate.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of Merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from the FRG to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of these preliminary determinations, we relied on best information available. Those instances where we used best information available are fully described below.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;
2. This was a customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market

matches in our price-to-price comparisons.

We calculated ESP based on packed, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for containerization, foreign inland freight, import brokerage, import duties, marine insurance, foreign inland insurance, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for advertising, credit, repacking in the United States, technical service expenses, third party payments, warranty expenses, and indirect selling expenses and commissions pursuant to Section 772(e) (1) and (2) of the Act.

For certain transactions, no amounts were reported for brokerage and handling, duty, U.S. inland freight, credit, and warranty expenses. As best information available, we found the average of each of the expenses and compared it to the average gross price reported. The resultant percentages were then applied, individually, to the gross price reported for each transaction in which these expenses were not reported.

FAG claimed an adjustment for losses or gains under "other revenue" on ESP sales. This loss or gain represents the per unit difference between the actual return in deutsche mark to FAG and the theoretical return in deutsche mark which FAG expected to receive at the time FAG priced its products, due to fluctuations in exchange rates. Since these products were actually priced and invoiced in U.S. dollars, there is no need to adjust United States price. Therefore, we disallowed this adjustment.

We have excluded from our calculation of United States price sales of bearings by FAG to the U.S. government for military/defense procurement. These sales were made under Schedule 8 of the TSUSA and will not be subject to any antidumping duties. [*See, e.g., Final Affirmative Antidumping Duty Determination; Titanium Sponge from Japan*, (49 FR 38687, October 1, 1984).] These imports were made prior to enactment of Section 1335 of the Omnibus Trade and Competitiveness Act of 1988 and will not be subject to suspension of liquidation. With respect to any future sales to the U.S. government, we will determine whether these sales are exempt from antidumping duties pursuant to the terms of section 1335 of the 1988 Act.

We also excluded from our calculation of United States price, replacement bearings for defective products, and bearings used as promotional samples; both provided free-of-charge to FAG's customers.

FAG reported purchase price sales of ball bearings in its deficiency response. However, these constitute a minimal percentage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of United States price.

B. *BMN:* GMN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) In order to determine identical merchandise in both the U.S. and home markets, we instructed respondents to assign identical products a unique "control number." In its response, GMN, for the most part, appears to have done this. However, in some instances, GMN appears to have assigned different control numbers to products it considered to be identical. Since we are not satisfied that matched products with different control numbers are in fact identical, we have limited our fair value analysis to those products with matching control numbers for purposes of the preliminary determination.

All of GMN's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for credit, indirect selling expenses, and commissions, pursuant to sections 772(e)(1) and (2) of the Act.

Although requested in our questionnaire, GMN did not report inventory carrying costs on its U.S. sales. Therefore, as best information available, we calculated inventory carrying costs based on information contained in GMN's narrative response and computer data base.

C. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

In its initial submission, INA did not report sales of any finished bearings which contained imported components and were further manufactured in the United States. In a letter dated August 22, 1988, The Department instructed INA to report all sales of such merchandise made during the period of investigation. While we received revised sales information which included such merchandise, it was received too late to be used for the preliminary determination. Therefore, we have used the earlier sales information as best information available.

All of INA's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling (which included containerization, marine insurance, ocean freight, U.S. inland freight and insurance), foreign inland freight, foreign inland insurance, and U.S. duty, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for warranty expenses, and indirect selling expenses, pursuant to sections 772(e)(1) and (2) of the Act.

For the following expenses, INA used the same allocation rates for U.S. sales of merchandise from INA–FRG, INA-France and INA–UK: brokerage and handling, foreign inland freight, foreign inland insurance, packing and non-U.S. selling expenses. The Department has requested that INA calculate separate allocation rates, by country, for these charges. Also, INA has calculated its foreign inland freight, ocean freight and packing based upon value rather than weight or volume. We have requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rates as the best information available.

D. *SKF:* In order to meet the minimum reporting requirement of 33 percent (*see*, "Alternative Reporting Requirements" section of this notice), SKF had to report both identical and similar home market matches which we used in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, foreign inland freight, inland freight, marine insurance, and ocean freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for commissions, credit,

repacking expenses in the United States, technical service expenses, warranty expenses, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

SKF reported purchase price sales of ball bearings during the POI. However, these constituted a minimal percentage of SKF sales to the United States. Therefore, we did not include these sales in our calculation of United States price.

In its narrative response, SKF provided an average unit charge for foreign inland freight for each of the three SKF companies under investigation in the FRG. However, in its data submissions, SKF did not report values for this charge. Therefore, we calculated foreign inland freight based on the information provided in its narrative response.

SKF claimed that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

II. Spherical Roller Bearings

FAG: FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for spherical roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

FAG reported purchase price sales of spherical roller bearings in its original response. However, these constitute a minimal percenteage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of United States price

III. Cylindrical Roller Bearings

A *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for cylindrical roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

FAG reported purchase price sales of cylindrical roller bearings in its deficiency response. However, these constitute a minimal percentage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of United States price.

B. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used al U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP for cylindrical roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. The adjustements were identical to those described above for ball bearings.

C. *SKF:* SKF rported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP for cylindrical roller bearings based on packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings, except for commissions (which are applicable only to sales of ball bearings).

IV. Needle Roller Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of FAG's U.S. sales were ESP transactions. We calculated ESP for needle roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP for needle roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

C. *SKF:* SKF repoted that more than 33 percent by volume of its U.S. sales were identical to products sold in the home markets. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transaction. We calculated ESP for needle roller bearings based on packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings except for commissions (which are applicable only to sales of ball bearings.)

V. Plain Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home markets. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of FAG's U.S. sales were ESP transaction. We calculated ESP plain bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *SKF:* SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price based on packed, f.o.b. European port prices to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for foreign inland freight, in accordance with section 772(d)(2) of the Act.

We calculated ESP for plain bearings based on packed, f.o.b. or delivered prices to unrelated customers in the

United States. The adjustments were identicial to those described above for ball bearings expect for commissions (which are applicable only to sales of ball bearings.)

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales. The calculation of foreign market value of each respondent is detailed below.

I. Ball Bearings

A. *FAG:* We calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing, and discounts and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for commissions, credit, technical service expenses, and warranty expenses. We also deducted certain indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

FAG claimed product liability premiums and advertising expenses as direct selling expenses. These claims were not adequately supported and, therefore, we treated them as indirect selling expenses.

FAG's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, FAG failed to provide an itemized breakdown of these indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

B. *GMN:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing and cash discounts. We added U.S. packing to the home market price in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. GMN claimed a deduction for commissions paid in the home market, some of which appear to have been paid to related parties. Given that the response has not clearly described the terms and conditions of the commissions, we have only considered as direct expenses those commissions paid to unrelated parties. Those commissions paid to related parties have been treated as indirect selling expenses, which have been deducted, along with other indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

GMN calculated home market inland freight based on a sampling of home market shipments. For purposes of this preliminary determination, we have accepted respondent's information as the best information available. We have notified GMN that this information must be supplemented and verified in order to be considered for purposes of the final determination.

C. *INA:* We calculated foreign market value based on delivered prices to unrelated customs in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing, and discounts and rebates. We added U.S. packing to the home market price in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we deducted credit expenses from home market price. We also deducted certain indirect selling expenses in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

INA's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaries, INA failed to provide an itemized breakdown of these indirect expenses claimed. Therefore, we have disallowed these expenses for the purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

INA has calculated its foreign inland freight and packing based on value rather than weight or volume. We have requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (i.e., by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rates as the base information available.

D. *SKF:* We calculated foreign market value based on c & f or c.i.f. prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight and home market packing. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit and warranty expenses. We also deducted certain indirect selling expenses in accordance with 19 CFR 353.15(c). We made further adjustments where applicable, to the home market price to account for physical differences in merchandise in accordance section 773(a)(4)(C) of the Act.

SKF stated that it calculated its home market packing costs based on two charges: transport packing and product packing. For product packing, SKF based its calculation on the ten highest priced products. We disallowed this portion of home market packing for all sales because we were not satisfied that SKF's methodology appropriately valued these expenses.

SKF's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of these indirect expenses claimed. Therefore, we have disallowed these expenses for the purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

SKF claimed home market cash discounts, rebates, and technical services as direct selling expenses. However, those claims were not adequately supported and, therefore, we treated them as indirect selling expenses.

SKF also claimed an adjustment for a category labelled "other expenses". However, no description of these expenses was provided. Therefore, these expenses were disallowed.

II. Spherical Roller Bearings

A. *FAG:* Following the methodology for determining home market viability, we found that the home market sales of

spherical roller bearings were not of a sufficient quantity to provide an adequate basis for foreign market value. (*See*, "Such or Similar" section of this notice.) In our original questionnaire, we had requested that respondent provide third country sales information where the home market was determined to be not viable. FAG did not provide us with this information. Therefore, on September 26, 1988, we issued a letter to FAG again requesting third country sales data. On September 29, and October 4, 1988, FAG submitted arguments challenging the Department's finding that the home market is not viable. Moreover, while respondent argued that it would not be possible to provide third country data in a timely manner, it did indicate that it would be able to submit constructed value information, which it did on October 6 and 20, 1988. However, this information was submitted too late to be considered for the preliminary determination. Therefore, we had to rely on best information available as required by section 776(c) of the Act, which for this determination was FAG's non-viable home market sales information. We calculated foreign market value for spherical roller bearings based on packed, c.i.f prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *FAG:* We calculated foreign market value for cylindrical roller bearings based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *INA:* We calculated foreign market value for cylindrical roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

C. *SKF:* We calculated foreign market value for cylindrical roller bearings based on the c & f or c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

A. *FAG:* We calculated foreign market value for needle roller bearings based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *INA:* We calculated foreign market value for needle roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

C. *SKF:* We calculated foreign market value for needle roller bearings based on the c & f or c.i.f. prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

V. Plain Bearings

A. *FAG:* We calculated foreign market value for plain bearings based on the packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *SKF:* We calculated foreign market value based on c & f or c.i.f. prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses and U.S. technical service expenses pursuant to 19 CFR 353.15. Since all home market products used in the fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

For comparisons involving ESP, we calculated foreign market value for plain bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

SKF stated that it calculated its home market packing costs based on two charges: transport packing and product packing. For product packing, SKF based its calculation on the ten highest priced products. For the reasons discussed above, we disallowed this portion of home market packing for all sales. In addition, for transport packing on sales of plain bearings, SKF allocated transport packing costs to all sales during the period of investigation although the narrative response states that packing is generally not included in the price for certain customers. Therefore, we also disallowed SKF's home market claim for the transport packing portion of home market packing costs for SKF sales of plain bearings.

SKF claimed home market technical service expenses as a direct selling expense. However, that claim was not adequately supported and, therefore, we treated these expenses as indirect selling expenses.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from the FRG. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply

monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. SKF has failed to provide the Department with shipment data for plain bearings. Therefore, as best information available, we are assuming that imports of plain bearings form SKF have been massive over a relatively short period of time. Based on our analysis of the monthly shipment data submitted by respondents, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of the following classes or kinds of merchandise form the companies listed below have been massive over a relatively short period of time.

1. Ball Bearings—INA, SKF
2. Spherical Roller Bearings—FAG
3. Cylindrical Roller Bearings—FAG, SKF
4. Needle Roller Bearings—SKF
5. Plain Bearings—SKF

Therefore, we find that the requirements of section 733(e)(1)(B) are met for the above companies and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by FRG manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).] Since FAG, INA, and SKF sell in the United States through related companies, and their margins are sufficiently high, we find that the requirements of section 733(e)(1)(A) are met for these companies with respect to the classes or kinds listed below. Therefore, the following chart sets forth our company-specific preliminary determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise form the FRG.

	Critical circumstances:
Ball bearings:	
GMN	No.
FAG	No.
INA	Yes.
SKF	Yes.
All Others	No.
Spherical roller bearings:	
FAG	Yes.
All Others	Yes.
Cylindrical roller bearings:	
FAG	Yes.
INA	No.
SKF	Yes.
All others	Yes.
Needle roller bearings:	
FAG	No.
INA	No.
SKF	Yes.
All others	No.
Plain bearings:	
FAG	No.
SKF	Yes.
All others	No.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise form the FRG, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of those products from those manufacturers, producers, and exporters in the FRG where we have preliminarily determined that critical circumstances exist (*see*, ther "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the FRG exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
FAG	80.38
GMN	21.52
INA	30.60
SKF	132.25
All others	70.04
Spherical roller bearings:	
FAG	48.47
All others	48.47
Cylindrical roller bearings:	
FAT	52.96
INA	10.05
SKF	76.27
All others	52.46
Needle roller bearings:	
FAG	115.40
INA	42.79
SKF	55.86
All others	48.97
Plain bearings:	
FAT	85.39
SKF	118.98
All others	115.89

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistat Secretary at least seven days prior to the schedule date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts threof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts there of (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction brearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708,60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation: other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheading: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

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BILLING CODE 3510-DS-M

[A-475-801]

Preliminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from Italy are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of antifriction bearings (other than tapered roller bearings) and parts thereof from Italy. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Italy as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Carole Showers, or

Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377–0161, 377–3217, or 377–2239, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Italy, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15075, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Italy (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to FAG Cuscinetti S.p.A. (FAG); Industria Cuscinetti S.p.A. (ICSA); and RIV-SKF Officine Di Villar Perose, S.p.A. (SKF). These companies account for a substantial portion of exports of the subject merchandise from Italy to the United States during the period of investigation.

The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see,* "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Italy. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from Italy.

However, since plain bearings enter the United States under a basket TSUSA category, we are unable to definitively establish whether plain bearings were imported from Italy during the period of investigation. In addition, we are unable to specifically identify any Italian exporters of plain bearings to the United States. Therefore, we have preliminarily determined that plain bearings from Italy are not being, or are likely to be, sold in the United States at less than fair value. We will continue to attempt to establish whether plain bearings from Italy were imported and attempt to identify any Italian exporters of plain bearings to the United States during the period of investigation for purposes of our final determination.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see,* "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental and deficiency questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesalere in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases [*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985)], the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proponent of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The

Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitions to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988) we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38(a), the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum outlining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submission, on April 20, 1988, we initiated an investigation of sales at LTFV from Italy. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*, these respondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market and third country sales below the COP, as appropriate.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to the following:

1. Ball Bearings—SKF, FAG
2. Spherical Roller Bearings—FAG

Therefore, the Department has reinstated COP investigations for these companies with respect to the classes or kinds of AFBs listed above.

Voluntary Respondents

On July 1, 1988, we issued questionnaires to companies which had expressed an interest in submitting voluntary responses in these investigations. However, no responses were received.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparison based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from Italy to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has failed to respond to our questionnaire, has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of these preliminary determinations, we relied on best information available. Those instances where we used best information available are fully described below.

United States Price

For those sales where the sales to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *FAG*: FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of FAG's U.S. sales were ESP transactions. We calculated ESP based on packed, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for containerization, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. inland freight, U.S brokerage and handling, U.S. duties, U.S. inland insurance, and repacking in the United States, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts and rebates. We made further deductions from ESP, where appropriate, for advertising, commissions, credit, technical services, third party payments, warranty expenses, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

FAG claimed an adjustment for losses or gains under "other revenue" on ESP sales. This loss or gain represents the per-unit difference between the actual return in lira to FAG and the theoretical return in lira FAG expected to receive at the time FAG priced its products, due fluctuations in exchange rates. Since these products were actually priced and paid for in U.S. dollars, there is no need to adjust the United States price. Therefore, we disallowed this adjustment.

For certain transactions, no amounts were reported for brokerage and handling, duty, technical services, U.S. inland freight, credit, and warranty expenses. As best information available, we found the average of each of the expenses and compared it to the average gross price reported. The resultant percentages were then applied, individually, to the gross price reported for each transaction in which these expenses were not reported.

We have excluded from our calculation of United States price sales of bearings by FAG to the U.S. government for military/defense procurement. These sales were made under Schedule 8 of the TSUSA and will not be subject to any antidumping duties. [*See, e.g., Final Affirmative Antidumping Duty Determination: Titanium Sponge from Japan*, (49 FR 38687, October 1, 1984).] These imports were made prior to enactment of Section 1335 of the Omnibus Trade and Competitiveness Act of 1988 and will not be subject to suspension of liquidation. With respect to any future sales to the U.S. government, we will determine whether these sales are exempt from antidumping duties pursuant to the terms of section 1335 of the 1988 Act.

B. *SKF*: SKF reported that less than 33 percent by volume of its U.S. sales were identical to products sold in the third country but did not provide enough third country matches of similar merchandise to reach the 33 percent threshold. (*See*, "Alternative Reporting Requirements" section of this notice.) Lacking these comparisons, we have applied best information available for those sales which would achieve the 33 percent threshold. We have used the margin calculated as best information available since this rate was higher than the rate provided in the petition for this class or kind of merchandise from Italy.

We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, inland freight, marine insurance, and ocean freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where approprite, for credit, direct selling expenses, "other expenses," repacking, technical services, warranty expenses, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

SKF reported a minimal amount of purchase price sales during the POI; however, SKF did not report complete

sales data for these transactions. For both these reasons, we did not include any purchase price sales in our calculation of United States price.

SKF notified us that approximately one percent of its reported U.S. sales of ball bearings were produced in a country other than Italy. SKF claims that although it is impossible for them to separate sales of this merchandise from that produced in Italy, United States price of multiple sourced products are comparable. While we will carefully examine this issue at verification, we have included all reported sales in our calculation of United States price as best information available.

SKF claimed that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

II. Spherical Roller Bearings

A. *FAG:* During the period of investigation, all FAG's sales of spherical roller bearings were made to the U.S. government for military/defense procurement. As explained above under the "Ball Bearings" section, these sales are not subject to antidumping duties. Because we are not using such sales to calculate United States price, we have no basis for determining whether FAG's sales of spherical roller bearings are at less than fair value. For any sales of this product by FAG which are not exempt from antidumping duties, the "All Other Rate" will apply.

B. *ICSA:* ICSA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (see "Alternative Reporting Requirements" section of this notice) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of ICSA's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts. We made further deductions from ESP, where appropriate, for advertising, commissions, credit, technical services, and indirect selling expenses, pursuant to sections 772(e)(1) and (2) of the Act.

ICSA calculated credit expense based on the average number of days from invoicing to payment. We have recalculated credit expense based on the actual number of days accounts receivable were outstanding.

For certain transactions, no amounts were reported for brokerage and handling, packing, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, U.S. inland freight and indirect non-U.S. selling expenses. As best information available, we found the average of each of the expenses and compared it to the average gross price reported. The resultant percentages were then applied, individually, to the gross price reported for each transaction in which these expenses were not reported.

III. Cylindrical Roller Bearings

SKF: In its original questionnaire response, SKF stated that it had sales of cylindrical roller bearings and needle roller bearings in the United States during the period of investigation, but reported inadequate sales information for United States price and failed to report any information for foreign market value. SKF later informed the Department that this information was not provided because there were no sales of such or similar merchandise in the home market during the period of investigation. We requested that United States price and constructed value information be provided in accordance with section 773(a)(2) of the Act. Although this information was subsequently submitted, it was not received in time for use in our preliminary determination. Therefore, we used, as best information available, the highest rate provided by petitioner for this class or kind of merchandise. If we are unable to verify the information submitted by SKF, we will continue to use best information available to calculate the United States price and constructed value in our final determination. However, best information available for purposes of the final determination may be different from the information used for this preliminary determination.

IV. Needle Roller Bearings

SKF: We used best information available for purposes of this determination as explained above for cylindrical roller bearings.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales and, where appropriate, third country sales. The calculation of foreign market value for each respondent is detailed below.

I. Ball Bearings

A. *FAG:* We calculated foreign market value based on packed and delivered prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from home market price, where appropriate, for inland freight, inland insurance, home market packing, and discounts and rebates. FAG failed to report U.S. packing. Therefore, we used home market packing expenses as best information available, and added this amount to foreign market value, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit, technical services, and warranty expenses. We also deducted certain indirect selling expenses and commissions in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparions are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

FAG claimed advertising and the cost of shipping sample bearings as direct selling expenses. However, its claims were not adequately supported. Therefore, we have treated these expenses as indirect selling expenses for purposes of this determination.

FAG's response included a claim for "indirect selling expenses". Although requested in our original and supplemental questionnaires, FAG failed to provide an itemized breakdown of the indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

B. *SKF:* Following the methodology for determining home market viability, we found that the home market sales of ball bearings were not of a sufficient quantity to provide an adequate basis for foreign market value. (*See*, "Such or Similar" section of this notice.) In our original questionnaire, we had requested that respondent provide third country sales information where the home

market was determined to be not viable. SKF did not provide us with this information. Therefore, on September 16, 1988, we issued a letter to SKF again requesting third country sales data. On September 23, 1988, SKF submitted arguments challenging the Department's finding that the home market is not viable, while also providing the Department with the requested third country sales data for sales to the Federal Republic of Germany, its largest third country market for sales of ball bearings from Italy.

We calculated foreign market value based on delivered prices to unrelated customers in the third country market. We made deductions, where appropriate, for export packing expenses, foreign inland freight, and inland freight. We added U.S. packing to the third country price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions, where appropriate, for credit and warranty expenses. We also deducted certain indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all third country products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SKF's response included a claim for third country "indirect selling expense". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of the indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

SKF claimed cash discounts, rebates, technical service expenses, as direct selling expenses. However, these claims were not adequately supported. Therefore, we treated these expenses as indirect selling expenses.

SKF also claimed an adjustment for a category labelled "other expenses". However, no description of these expenses was provided. Therefore, these expenses were disallowed.

II. Spherical Roller Bearings

A. *FAG*: We have not calculated foreign market value for FAG's sales of spherical roller bearings as explained above under the "United States Price" section for spherical roller bearings.

B. *ICSA*: We calculated foreign market value based on packed, delivered prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, packing, and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We also deducted indirect selling expenses and commissions, in accordance with 19 CFR 353.15(c). Since all third country products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

III. Cylindrical Roller Bearings

SKF: We used best information available for purposes of this determination as explained above under the "Untied States Price" section for cylindrical roller bearings.

IV. Needle Roller Bearings

SKF: We used best information available for purposes of this determination as explained above under the "United States Price" section for cylindrical roller bearings.

Currency Coversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Italy. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we beleive that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. SKF has failed to provide the Department with shipment data for ball bearings. Therefore, as best information available, we are assuming that imports of ball bearings from SKF have been massive over a relatively short period of time. Based on our analysis of the monthly shipment data submitted by respondents, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of the following classes or kinds of merchandise from the companies listed below have been massive over a relatively short period of time.

1. Ball Bearings—FAG, SKF.

Therefore, we find that the requirements of section 733(e)(1)(B) are met for the above companies and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Italian manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or

greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficnet. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).] Since FAG and ICSA sell in the United States through related companies, and because there rates are sufficiently high, we find that the requirements of section 733(e)(1)(A) are met for FAG with respect to ball bearings and ICSA with respect to spherical roller bearings. Therefore, the following chart sets forth our company-specific preliminary determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from Italy.

	Critical Circumstances
FAG	Yes
SKF	Yes
All Others	Yes
Spherical Roller Bearings:	
ICSA	No
All Others	No
Cylindrical Roller Bearings:	
SKF	No
All Others	No
Needle Roller Bearings:	
SKF	No
All Others	No

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Italy, as defined in the "Scope of Investigations" section of this notice, with the exception of entries of plain bearings, that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of those products from those manufacturers, producers, and exporters in Italy where we have preliminarily determined that critical circumstances exist (*see*, the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Italy exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-Average Margin Percentage
Ball Bearings:	
FAG	42.05
SKF	155.99
All Others	129.20
Spherical Roller Bearings:	
ICSA	5.76
All Others	5.76
Cylindrical Roller Bearings:	
SKF	35.60
All Others	35.60
Needle Roller Bearings:	
SKF	153.60
All Others	153.60
Plain Bearings:	
All Manufacturers/Producers/-Exporters	0.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717/8, 680.3717/8, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8482.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

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[Application No. 88-00014]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to American Cast Metals Association ("ACMA"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Any ferrous (iron or steel) or non-ferrous (e.g., aluminum, magnesium, bronze, brass, copper, and zinc) casting, whether finished or unfinished.

2. Services

Design services related to Products and related manufacturing processes; licensing of Technology Rights concerning Products and related processes.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

4. Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; and liaison with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except: (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands); and (b) Canada.

Export Trade Activities and Methods of Operation

1. ACMA and-or its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and Services and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member Suppliers to sell their Products and Services or offer their Export Trade Facilitation Services through the certified activities of ACMA and/or its Members; provided, however, that non-member Suppliers will not participate in the full range of certified export trade activities and methods of operation under this Certificate; rather, their participation shall be limited to those activities typically associated with subcontractors;

f. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licences shall be determined solely by negotiations between the licensor Member and the export customer without coordination with ACMA or any Member;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. ACMA and/or its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products or Services in that country or market. In exclusive Export Intermediary agreements, (i) ACMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ACMA or the Member(s) acting as exclusive intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ACMA and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangement and which request such services.

3. ACMA and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

b. Information about the export prices, quality, quantity, source, and delivery dates of Products available from members for export, provided, however, that exchanges of information and discussions as to Product quality, source, and delivery dates must be on a transaction-by-transaction basis only and involve only those members which are participating or have a genuine interest in participating in such transaction;

c. Information about terms, conditions and specifications of particular contracts for sale in Export Markets to be considered and/or bid on by ACMA and its Members;

d. Information about joint bidding, selling, or servicing agreements for Export Markets and allocations of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

g. Information about ACMA's or its Members' export operations, including without limitation sales and distribution networks established by ACMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. ACMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by the ACMA itself, or by agreement with Members or other parties.

5. ACMA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. ACMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of ACMA, as listed in Appendix A, and subject to the provisions of this paragraph. New ACMA Members may, from time to time, be incorporated in this Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of an annual written notification to the Secretary of Commerce and the Attorney General stating changes in ACMA membership, identifying all new ACMA Members that desire to become a Member under this Certificate pursuant to the abbreviated amendment procedure, and certifying for each new ACMA Member so identified its sales of Products in prior fiscal year. Notice of new Members so identified shall be published in the **Federal Register**. However, ACMA may withdraw one or more individual Members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of the new Members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such new Members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the nonabbreviated amendment procedure. This same procedure may be utilized by ACMA to delete one or more Members from the Certificate.

Terms and Conditions of Certificate

(a) In engaging in Export Trade Activities and Methods of Operation, neither ACMA nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information that is about its or any other Member's or Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchaser.

(b) Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing, servicing and repair arrangements) shall be in connection with actual or potential bona fide export transactions and shall be on a transaction-by-transaction basis only and shall include only those Members participating or have a genuine interest in participating in such transactions; provided that ACMA and/or its Members may discuss standardization of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations.

(c) Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products or Services in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to ACMA, a copy of which ACMA shall promptly transmit to the Secretary of Commerce and the Attorney General.

(d) ACMA and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevent to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information of documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Record Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: November 4, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

Appendix A

Members of Applicant

AACCO Foundry
Abex Corp.
Ace Foundry Co.
Advance Foundry Co.
Akron Foundry Co.
Allegheny Foundry Co.
Alloy Engineering and Castings
Alloys Non Ferrous Foundry
Aluminum Castings Corp.
Amcast Industrial Corp.
The American Brass and Iron Foundry
American Cast Iron Pipe
American Steel Foundries
American Valve and Hydrant Manufacturing Co.
Anstey Foundry
Appleton Electric Co.
Arneson Foundry, Inc.
Arrow Aluminum Castings
Arth Brass & Aluminum Castings
Arzt Foundry Co.
Atherton Foundry Products
Atlantic States Cast Iron Pipe
Atlas Foundry Co.
Gartland-Haswell Foundry Co., Inc.
Atlas Foundry and Machine Co.
Auburn Foundry Co.
Aurora Industries Inc.
Badger Foundry Co.
Bahr Brothers Manufacturing Co.
Barry Foundry
Batavia Foundry and Machine Co.
Belgium Foundry Corp.
Bell Foundry Co.
Beloit Corp.
Benton Foundry
Berlin Foundry Corp.
Bierman-Everett Foundry
Blackhawk Foundry and Machine
Bloomfield Foundry
Bodine Aluminum Inc.
Brass and Bronze Casting Co.
Briggs & Stratton Corp.
Brillion Iron Works
Bronze Co. Ltd., K.P.
Bronze Craft Corp.
Brookman Cast Industries
Brooks Foundry
Brumund Foundry, Inc.
Buck Co., Inc.
Burnham Corp.
Calhoun Foundry Co.
California Electric Steel
Calumet Brass Foundry
Campbell Foundry Co.
Canton Castings
Cast Metals Corp. of Florida
Cedar Springs Castings, Inc.
Centre Foundry and Machine Co.
Chicago Aluminum Castings Co., Inc.
Chicago-Dubuque Foundry
Christensen and Olsen Foundry Co.
Citation Carolina Corp.
Southern Ductile Casting Co.
Clark Metal
Clay & Bailey Manufacturing Co.
Clearfield Machine
Clow Corp.
Clow Water System Corp.
CMI International
Cochrane Foundry
Colonial Brass Co.
Columbian Bronze Corp.
Columbiana Foundry Co.
Consolidated Metco
Covert Iron Works
Crowe Foundry Ltd.
Curto-Ligonier Foundry Co.
Dalton Foundries
Dameron Alloy Foundries
Dayton Foundry
De Zurik Corp.
Decatur Foundry
Deere & Company
Delray Steel Castings
Dempsey Inc.
Dent Manufacturing
Detroit Non Ferrous Foundry
Dexter Co.
Didion & Sons Foundry Co.
Dix-Superior Aluminum Foundry, Inc.
Dock Foundry Co.
Dofasco Inc.
Donsco Inc.
Down River Casting Co.
Draper Corp.
Duriron Co., Inc.
East Jordan Iron Works
The Eastern Company
Eastern Foundry Co.
ECK Foundries
Electric Steel Castings Co.
Electron Corp.
Elizabeth Street Foundry Co.
Elkhart Foundry & Machine
Ellis & Vans Foundry
EMI Company
Enderlein Co., H.G.
Enterprise Brass Works
Ephrata Manufacturing Company, Inc.
Erie Bronze & Aluminum
Essex Castings
Ewing Light Metals Inc.
Excelsior Foundry Co.
Fairfield Aluminum Castings
Falcon Foundary Co.
Falk Corp.
Faunt Foundry Co.
Felton Aluminum Co.
Ferrous Technology
Kline Foundries
Fisher Cast Steel Products
Flanagan Iron Works
Flomatic Corp.
Fonderie Grand'Mere Ltee
Ford Motor Co.
Foundry Inc., The
Foundry of The Schoals
Francis and Nygren Foundry Co.
Frank Foundries Corp.
Frazer And Jones Co.
Frog, Switch & Manufacturing Co.

Frontier Foundries
G&C Foundry Co.
Gainesville Foundry
Galva Foundry Co.
Gartland Foundries, Inc.
Gartland Foundry Co.
General Casting Co.
General Foundry Co.
General Housewares Corp.
General Signal
GIW Industries, Inc.
Globe Iron Foundary
Goetz Corp. of America
Golden's Foundry & Machine Co.
Great Lakes Castings Corp.
Grede Foundries
Gregg Industries
Halpen & Co.
Harmony Castings
Harrison Steel Castings Co.
Heatwole Foundry Company, Inc.
Hendrix Mfg. Co.
Charles O. Hiler and Son, Inc.
Hiler Industries
Accurate Castings, Inc.
Hitchcock Industries
HNF Inc.
Hodge Foundry
Hunstad Foundry
Hyde Park Foundry & Machine
Intermet Corp.
Interstate Castings
Iowa Iron Works
Iowa Malleable Iron Co.
Iroquois Foundry Co.
James Jones Co.
Johnstown Corp.
Joy Tech., Inc.
Kelly Foundry & Machine
Kelsey-Hayes, Inc.
Keystone Grey Iron Foundry Co.
Kirsh Foundry Inc.
Kurdziel Iron Industries
Lacy Foundries
Lancaster Malleable Castings Co.
Larson Foundries
Lattimer-Stevens
Lawran Foundry
Le Baron Foundry
Leitelt Brothers
LEMFCO Inc.
Liberty Foundry Co.
Lincoln Brass Works
Littler Diecast Corp.
Lodi Iron Works, Inc.
M&H Valve Co.
M.P. Industries, Inc.
Mackenzie Speciality Castings
Mansfield Brass & Aluminum
Martin Foundries Co.
Maynard Steel Casting Co.
McConway & Torley Corp.
McDonald Manufacturing Co., A.Y.
McWane Cast Iron Pipe
Mereen Johnson Machine Co.
Merit Metal Products Corp.
Metal Dynamics Corp.
Mid City Foundry Co.
Midwest Foundry Co.
Midwest Metallurgical Laboratory, Inc.
Milwaulkee Malleable & Gray Iron Works
Mobil Pulley & Machine Works
Modern Foundry & Manufacturing
Morrow Foundry Inc.
Motor Castings Co.
Multi-Cast Corp
Myers Co., F.E.
National Castings Inc.
Navistar International
Neelon Castings
Neenah Brass & Aluminum
Neenah Foundry Co.
Neptune Water Meter Co.
NO AM Corp.
North American Royalties
Noblesville Casting
North Star Casteel Products
Nutmeg Steel Castings
O&H Foundry
Oil City Iron Works
Omaha Steel Castings
Opelika Foundry Co.
Orrville Bronze & Aluminum
Osco Industries
Overmyer Corp.
P.C.M. Company
Pacific States Cast Iron Pipe
Pelton Casteel
Penncast Corp.
Pennsylvania Steel Foundry & Machine
Perkins, Henry Co.
Philbrick-Booth & Spencer
Piad Precision Casting
Plymouth Foundry Inc.
Pohlman Consolidated
Pomona Die Casting Corp.
Pontiac Foundry
Process Prototype
Progressive Foundry
Prospect Foundry
Quaker Alloy Inc.
Quali-Cast Foundry, Inc.
Quality Castings Co.
R&D Pattern & Foundry
Racine Steel Castings
Reliable Castings Corp.
Reliance Electric Corp.
Richmond Casting Company
Robinson Foundry
Rochester Metal Products Corp.
Rockwell International
Rodney Hunt Co.
Roloff Manufacturing Corp.
Ross Aluminum Foundries
Sawbrook Steel Casting Co.
Cushman Foundry Inc. Div.
Schneider Corp.
Scott Casting Corp.
Scott-Atwater Foundry
Seneca Foundry, Inc.
Sharon Foundry
Shumway and Sons, C.W.
Sibley Machine & Foundry
Slinger Manufacturing Co.
Sloan Valve Co.
Smith Cos., H.B.
Smith Foundry Co.
Smith Steel Casting Co.
Somerset Consolidated
Soundcast Co.
Southern Alloy
Southern Cast Products
Specialty Castings
Springfield Aluminum Co.
Springfield Foundry
Stahl Specialty Co.
Stainless Foundry & Eng.
Standard Foundry Co.
Standard Foundry Products
Sterling Casting Corp.
Sterling Foundry Co.
Stillman White Co.
Stockham Valves & Fittings
Sturgis Foundry Co.
St. Anne's Foundry
St. Louis Steel Casting
St. Mary's Foundry
St. Paul Brass Foundry
Swayne, Robinson & Co.
Talladega Castings & Mach Co.
Talladega Foundry & Machine
Taylor & Fenn Co.
Teledyne Casting Service
Terrecorp
Texas Foundries
Trinity Valley Iron Works
East Penn Foundry Co.
Unimatic Manufacturing Corp.
Union City Mold & Die Casting Corp.
Union Foundry Co.
United Brass Works
Universal Cast Iron Manufacturing Co.
Urick Foundry Co.
U.S. Magnet & Alloy Corp.
U.S. Pipe and Foundry
Utica Radiator Corp.
V&W Castings
Valley Brass
Varicast Northwest
Victaulic Co. of America
Wagner Castings Co.
Waterman Industries, Inc.
Waupaca Foundry
Wells Manufacturing Co.
West Michigan Steel Foundry
Western Foundry Co.
Westwick Foundry
Whitman Foundry
Whittaker Corp.
Woodland Aluminum Casting
Xenia Foundry & Machine.

[FR Doc. 88-25896 Filed 11-8-88; 8:45 am]
BILLING CODE 3510-DR-M

National Institute of Standards and Technology

Workshop on Alaska Arctic Offshore Oil Spill Response Technology; Meeting

The Workshop on Alaska Arctic Offshore Oil Spill Response Technology will be held at the Anchorage Sheraton Hotel, Anchorage, Alaska, November 29 through December 1, 1988.

The Workshop will be a public forum to describe existing research programs, to identify future research needs and priorities to improve and to advance Arctic oil spill response capabilities and to present discussions of the state-of-the-art in mechanical recovery, mechanical containment, in-situ burning, chemical treatments, readiness and activities of major Arctic oil spill research programs. The Workshop will focus on existing and developing technologies and will not address fate and effect issues.

The Workshop is being coordinated by the National Institute of Technology and Standards, Department of

Commerce, for the Minerals Management Service, Department of Interior.

FOR FURTHER INFORMATION CONTACT: Ms. Nora H. Jason, Coordinator, Workshop on Alaska Arctic Offshore Oil Spill Response Technology, National Institute of Standards and Technology, Building 224, Room A252, Gaithersburg, MD 20899, telephone 301–975–6862.

Date: November 3, 1988.

Ernest Ambler,

Director.

[FR Doc. 88–25856 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 80869–8169]

National Voluntary Laboratory Accreditation Program: Proposed Program For Radiation Instrumentation Calibration

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: In accordance with § 7.11 of the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) pertaining to requests from individuals (15 CFR Part 7), notice is hereby given by the National Institute of Standards and Technology of the receipt of a letter dated June 3, 1988, from Elmer Eisenhower, chairman of the Criteria Writing Group comprised of 26 representatives from laboratories concerned with measurement of ionizing radiation. The letter requests the development of a laboratory accreditation program to accredit laboratories that calibrate instrumentation used for such measurements. The letter, which is set out at the conclusion of this notice, includes a statement of need and other considerations in support of its request, meeting the conditions set forth under § 7.11(b).

Any person desiring to comment regarding the need for this program is requested to do so, in writing, not later than 60 days from the date of this notice. Comments should be sent to Mr. John L. Donaldson, Manager, Laboratory Accreditation, National Institute of Standards and Technology, A527 ADMIN, Gaithersburg, MD 20899; (301) 975–4017. Copies of comments received will be available for inspoection and copying at the Department of Commerce Central Reference and Records Inspection Facility, Room 6228, Hoover Building, Washington, DC 20230.

Ernest Ambler,

Director.

Date: November 3, 1988.

June 3, 1988

Dr. Ernest Ambler,

Director, National Institute of Standards and Technology, A1139 Administration, Gaithersburg, MD 20899.

Dear Dr. Ambler: The purpose of this letter is to request establishment of a Laboratory Accreditation Program (LAP) under the procedures described in 15 CFR Part 7. This request is made on behalf of 26 representatives of laboratories that would either be potentially accredited through the requested LAP or are directly concerned with its development.

The scope of the LAP would cover accreditation of laboratories that calibrate instrumentation used for measurement of ionizing radiation. It would include calibration of radiation survey instruments, irradiation of personnel dosimeters, calibration of radiation sources, calibration of reference-class instruments, and calibration of instruments used to measure diagnostic x rays in medical applications.

The applicable standard that would be used to evaluate candidate laboratories is a docment prepared by the 26 representative mentioned above. It is entitled "Criteria for the Operation of Federally-Owned Secondary Calibration Laboratories (ionizing Radiation)" and represents a consensus of the laboratory representatives. This document is generally available, is in the public domain, and is not proprietary in any sense. After the minor revisions expected to be made soon after initial use of the document for laboratory evaluation, we plan to have it published by a suitable national organization.

We estimate approximately eight laboratories would be accredited under the request LAP that presentaly operate at the secondary level, using measurement standards calibrated by the National Institute of Standards and Technology (NIST). The departments or agencies in which the candidate laboratories operate are the Department of Energy, Department of Defense, Food and Drug Administration, and the Federal Emergency Management Agency. In the future, we also plan accredition of laboratories at the tertiary level, using suitably modified evaluation criteria. It is estimated that another 10 laboratories may be accredited at the level.

The laboratory representatives feel it is necessary to have accreditation by a federal agency, as opposed to private-sector accreditation. They are concerned that it would be inappropriate for them to be accredited by a private-sector organization whose members are subject to their regulations. During a recent meeting of these laboratory representatives they voted, with no dissent, in favor of accreditation by NVLAP.

Calibrations performed routinely by the candidate laboratories support thousands of radiation measurements made daily in the nuclear industry, defense applications, emergency response, and medical diagnostics. The requested LAP would provide continuing assurance that those calibrations would be performed with adequate quality. Such quality assurance is presently lacking. In addition, the requested LAP would enable accredition of the proficiency testing laboratory presentaly used for the ongoing personnel dosimetry LAP.

At this time there is no existing laboratory accreditation program in either the public or private sector that has sufficient scope to serve the needs of these candidate laboratories. The breadth of scope and the rigor of the criteria proposed for this request LAP exceed any existing program in the national measurement support system for ionizing radiation.

The 26 representatives who have developed the proposed evaluation criteria constitute a group of the country's experts in this technical field. Their services are available to assist in various aspects of development of the requested LAP, and to subsequently perform on-site assessments.

Thank you for considering this request. I will be happy to provide any additional information necessary.

Sincerely,

Elmer Eisenhower,

Chairman, Criterial Writing Group.

[FR Doc. 88–25858 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–13–M

American National Standard on Orifice Metering of Natural Gas: Correction to Notice

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of correction to notice of intent to revise and request for comment and participation in standards development.

In the notice in the **Federal Register** on October 7, 1988 (53 FR 39496), the summary contained a reference to the ANSI/API standard for "Orifice Metering of Natural Gas and Related Hydrocarbon Fluids." The number of the standard was incorrect. The correct number should be ANSI/API 2530.

Ernest Ambler,

Director.

Dated: November 3, 1988.

[FR Doc. 88–25857 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

National Undersea Research Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for proposals.

SUMMARY: The Office of Undersea Research (OUR) of the National Oceanic and Atmospheric Administration (NOAA) plans to expand the network of centers comprising the National Undersea Research Program (NURP). Accordingly, OUR is soliciting proposals from institutions to manage an undersea program on the west coast of the United States. OUR desires to establish two such centers; one to support the northwest science community (including Alaska) and a second to support the southwest community. However, because of possible budget constraints, OUR reserves the right to establish one center to service the entire west coast community, and may so designate one of the applicants.

Two planning studies were undertaken by representatives of research institutions and universities on the west coast. These studies provide an evaluation of the scientific demand for *in situ* research in this region and recommendations for an appropriate scientific and management framework for a future program. Respondents to this solicitation should refer to these studies when preparing a proposal. Copies of the final reports for both studies and guidelines for preparation of proposals are available from OUR. These reports may be obtained free of charge by calling or writing the Office of Undersea Research.

DATES: Proposals must be received by the Office of Undersea Research no later than December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Director, Office of Undersea Research, NOAA, Suite 805, WSC–5, 6010 Executive Boulevard, Rockville, MD 20852, (301) 443–8391.

SUPPLEMENTARY INFORMATION:

Proposal Criteria

I. Program Management Plan

The results of the Southwest and Northwest Planning Studies (copies available from NOAA's Office of Undersea Research) examined the justification for an undersea program on the west coast and recommended the following framework for managing such a program:

a. Maintain flexibility in meeting the changing demand of the research community by leasing major undersea platforms.

b. Establish a central administration to coordinate and manage an undersea research program.

c. Implement NOAA's peer review system to evaluate the scientific merit of requests for program support.

NOAA endorses these recommendations and requires that the responsive proposal described how the candidate center would:

a. Establish and maintain a management structure to implement and conduct an undersea program based upon leasing of facilities such as ROVs and manned submersibles required to conduct *in situ* research. This should include an organization chart and description of key personnel and their responsibilities.

b. Develop and maintain the means to ensure the marine science community is aware of the program and opportunities for participation.

c. Determine the nature and scope of equipment acquired by the program and the procedure for its storage, control and use.

d. Coordinate and therefore reduce duplication of effort among research institutions, government agencies, and private industry.

e. Establish and use a program advisory committee.

f. Develop relationships of the program management with NOAA's Office of Undersea Research.

g. Evaluate science proposals and develop and maintain methods for monitoring results of science and technology activities.

h. Review the program's capability to address scientific requirements and long-term objectives.

II. Facilities

Although experience has demonstrated that a lease approach offers flexibility, economy, and continued access to state-of-the-art undersea systems (and it is recommended for the west coast), some facilities are required to support the new undersea research center(s). Such facilities may include the following items:

a. Provision of office space to house program management and administrative support staff.

b. Storage space for equipment that is acquired by or shared with the program.

c. Support vessels, machine shops, and availability of technical and engineering personnel.

In consideration of facilities, the proposal should include the following information:

d. Description of institutional commitment to support the program including use of existing or proposed facilities, equipment storage, repair or fabrication shops, docks, staging areas and laboratories.

e. Extent and manner in which the institution commits support for these operations and support facilities (full or partial support).

f. Identification and description of those facilities which are to be funded entirely or partially by NOAA or another government agency.

III. Institution Capability

Experience indicates that successful undersea research programs are directly related to the character and quality of the leadership and support provided by the host institution (or consortium of institutions). The character and demonstration of such attributes will be a major consideration when deliberations are held to award a grant for the operation of a west coast center(s) and associated program(s). Consequently, the proposal also should address the following:

a. Prior history and level of institutional experience with the management of large, multidisciplinary, multiinstitution research programs.

b. Position of the proposed undersea program within the organization of the institution and level of involvement of senior institution management with the program.

c. Qualifications to be sought in the management team for the undersea program(s).

d. Level of effort (in man-months) for each member of the program management team including administrative and support staff.

e. Unique qualifications held by the institution or an individual to operate or manage the program.

f. Financial contributions from the host institution(s) such as matching salary support, facilities, or adjustment in rate of indirect costs.

IV. Safety Plan

Safety is a basic concern of each undersea research program and is a consideration in the planning and conduct of all NOAA-sponsored undersea activities. All facilities used to place scientists in the sea must be certified by the American Bureau of shipping and/ or a recognized, equivalent licensing authority. Management of wet diving activities must meet the requirements set forth in NOAA Diving Regulations. For clarification, these requirements will be stated in the grant instrument. Thus, each proposal should address how the candidate center(s) will:

a. Establish a Diving Safety Panel to provide oversight for all diving activities.

b. Accept and monitor adherence to the NOAA Diving Regulations.

c. Accept and monitor adherence to NOAA certification requirements when leasing or using manned systems.

V. Science Program Development

NOAA Is a mission-oriented agency founded on scientific and technical goals and located within the Department of Commerce. Therefore, an undersea research program should address one or more of the following departmental goals:

a. Increase our understanding of oceanic and atmospheric processes through measurement and research.

b. Promote the development and application of science and technology in U.S. industries.

c. Improve federal management of U.S. ocean and coastal resources.

d. Determine the characteristics and resources of the 200 mile U.S. exclusive economic zone.

e. Provide timely environmental data, information, and assessments to U.S. industry.

f. Increase exports and domestic consumption of U.S. fishery products.

g. Improve delivery of ocean information products and services.

h. Promote the development and growth of oceanic and atmospheric industries.

Within the framework provided by these goals, the proposal should explain how the undersea program will:

i. Identify and produce the research framework and questions to be addressed (see planning reports for details).

j. Discuss the uniqueness of the scientific questions and the proposed approach to address these questions.

k. Discuss the application of undersea technology to these questions.

l. Describe the research objectives of the proposed program and the significance of the expected results.

m. Discuss the relationship of the proposed research program to the present state of knowledge and describe any related research completed through and/or presently being conducted at your institution.

VI. Information Transfer

NOAA is especially concerned with the dissemination of information resulting from sponsored programs. Thus, the proposal should describe the mechanisms that will be used to:

a. Monitor advances in technology related to undersea research and dissemination of information on technical innovation to the user community.

b. Inventory and coordinate the use of undersea equipment.

c. Establish the program as a liaison between the research community and industry.

d. Disseminate results of undersea research activities.

VII. Budget

Estimation of annual costs for the center(s) are required prior to any decision to award a program grant. The proposal should include at least the following budget information:

a. Funds required to develop and conduct the program during fiscal year 1989 including salaries, equipment, services, and expected sources of income.

b. Anticipated funds required for purchase or lease of equipment, administrative costs, and travel.

c. Identify and allocate matching funds against line items.

Summary

All proposals received in response to this solicitation will be reviewed and evaluated with respect to the following criteria:

a. Program Management
b. Facilities
c. Institution Capability
d. Safety Plan
e. Science Program Development
f. Information Transfer
g. Budget

Receipt of each proposal will be acknowledged.

Any questions or correspondence concerning this solicitation should be directed to: Director, NOAA's Undersea Research Program, Suite 805, R/SE2, 6010 Executive Boulevard, Rockville, Maryland 20852.

Date: October 28, 1988.

Joseph O. Fletcher,

Assistant Administrator for Oceanic and Atmospheric Research, NOAA.

[FR Doc. 88-25887 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Intention to Grant Exclusive Patent License; Pediatric Pharmaceuticals, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pediatric Pharmaceutical, Inc., having a place of business in Edison, NJ, an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7-055,008. "New Immunotherapeutic Method of Treating Respiratory Disease". The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquires, comments, and other materials relating to the proposed license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephone (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-25877 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-04-M

Intention to Grant Exclusive Patent License; Roberts Pharmaceutical Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Pharmaceutical Corporation, having a place of business in Eatontown NJ., an exclusive license in the United States to practice the invention entitled "Chemical Differentiating Agents" U.S. Patent Application Number 7-062,422. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703)

487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–25877 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–04–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 17 November 1988 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 1 November 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88–25971 Filed 11–8–88; 8:45 am]

BILLING CODE 6330–01–M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

Summary: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, November 14, 1988, beginning 9:00 a.m.; Tuesday, November 15, 1988, beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302–0268.

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

Supplementary Information: The executive meeting of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88–25906 Filed 11–8–88; 8:45 am]

BILLING CODE 3820–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

November 4, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 7, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 218, 219, 313, 315, 640, 641 and 642 are being increased, variously, for swing and carryforward. Categories 300/301 and Category 363 are being reduced to account for the swing being applied. Category 313 is being increased also by special shift from Category 363.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 58, published on January 4, 1988; and 53 FR 43466, published on October 27, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 4, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 7, 1988, the directive of December 30, 1987 is being amended further to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and India:

Category levels in group I	Adjusted 12-month limit[1]
218	8,814,000 square yards.
219	42,000,000 square yards.
300/301	5,800,916 pounds.
313	23,456,496 square yards.
315	9,009,737 square yards.
363	15,407,500 numbers.
640	149,806 dozen.
641	886,291 dozen.
642	269,331 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25894 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Macau

November 4, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 14, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of Macau, the current minimum consultation level is being increased for Category 434. As a result, the limit for Category 434, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published December 16, 1987). Also see 52 FR 49466, published on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 4, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 14, 1988, the directive of December 28, 1987 is being amended to increase to 3,500 dozen [1] the limit for wool textile products in Category 434.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile agreements.

[FR Doc. 88-25895 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 13-14 Dec 88 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-25880 Filed 11-8-88; 8:45 am]

BILING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 28-29 November 1988.

Time: 0830-1600 hours, 28 November 1988; 0830-1500 hours, 29 November 1988.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Effectiveness Review Panel of the US Belvoir Research, Development and Engineering Center will meet in a working session to provide final editing to the Ad Hoc Committee Report. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-25919 Filed 11-8-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 29-30 November 1988.

Time: 0700-1700 hours, 29 November 1988; 0800-1200 hours, 30 November 1988.

Place: Fort Bliss, Texas.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Family Programs will be hosted by the Commanding General of Fort Bliss, Texas. The subgroup will received briefings on those programs being utilized at Fort Bliss that address soldier and family issues impacting on quality of life in the Fort Bliss community. In addition, the subgroup will be afforded the opportunity to visit with soldiers and families to hear firsthand of their concerns. This is being done as part of the overall effort on the part of the panel to collect information and to observe Army efforts to meet the need of soldiers and families in the Army. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-25920 Filed 11-8-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act

[1] The limit has not been adjusted to account for any imports exported after December 31 1987.

(Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 30 November–1 December 1988.

Time: 0800—1700 hours each day.

Place: Riverside Research Institute, New York, New York.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-On) will meet in Executive Session to finalize the report of the panel's study on ICBM target discrimination. This meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–25921 Filed 11–8–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 1–2 December 1988.

Time of meeting: 0830–1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Explosive Systems (TEXS) will meet for the purpose to review the site visits to Yuma Proving Ground, Ireco Chemical Corporation, U.S. Army Engineering School, and Atlas Chemical Corporation, and to draft the final report for the study group. Because of the proprietary information to be discussed, the meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–25922 Filed 11–8–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 9, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission to these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 4, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: NEW COLLECTION
Title: National Assessment of Educational Progress (NAEP): Field Tests for 1989 Assessment
Frequency: Non-recurring
Affected Public: Individuals or households; State or local governments
Reporting Burden: Responses: 16,176
Burden Hours: 12,941
Recordkeeping: Recordkeepers: 0
Burden Hours: 0

Abstract: Congress mandated the collection of National Assessment survey data. Development of background questions and exercises, as well as field-testing of items for the 1989–90 assessments in reading, mathematics, and science, including the Trial State Assessment Program will occur during the 1989 school year. Results will be used to select exercises for the 1989–90 assessment. Respondents will be students at grade 4, grade 8, grade 12, teachers, and principals.

Office of Education Research and Improvement

Type of Review: REVISION
Title: Integrated Postsecondary Education Data Systems (IPEDS)
Frequency: Annually
Affected Public: State or Local Governments, Businesses or other for-profit, Non-profit institutions
Reporting Burden:
Responses: 37,000
Burden Hours: 65,200
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: The information collected for the IPEDS is used to report statistics on the condition of postsecondary education. IPEDS provides data on a broad range of topics including postsecondary students, faculty and staff, programs, institutions and finances.

Office of Elementary and Secondary Education

Type of Review: NEW COLLECTION
Title: Application for grants under the Jacob K. Javits Gifted and Talented Students Education Act of 1988
Frequency: Annually
Affected Public: State or local governments and small businesses or organizations

Reporting Burden:
Responses: 400
Burden Hours: 12,000
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by state and local agencies, institutions of higher education and other public and private agencies and organizations to apply for new awards under the Jacob K. Javits Gifted and Talented Students Education Act of 1988. The Department used the information to make grant awards.

Office of Special Education and Rehabilitation Services

Type of Review: REVISION
Title: Three Year State Plan for Vocational Rehabilitation Services
Affected Public: State or local governments
Frequency: Triennially
Reporting Burden:
Responses: 86
Burden Hours: 6,450
Recordkeeping:
Recordkeepers: 86
Burden Hours: 1,450,860

Abstract: State agencies that administer Vocational Rehabilitation (VR) programs must submit a three year State plan to receive Federal funds. The Department will use the information to make grant awards, and to evaluate States' performance and compliance under Title I of the Rehabilitation Act, as amended.

[FR Doc. 88-25966 Filed 11-8-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10086-000]

Brewster Grist Mill Co.; Surrender of Preliminary Permit

November 1, 1988.

Take notice that Brewster Grist Mill Company, permittee for the proposed Brewster River Water Power Project, has requested that its preliminary permit be terminated. The permit was issued on January 16, 1987, and would have expired December 31, 1989. The project would have been located on the Brewster River, near the town of Jeffersonville, in Lamoille County, Vermont. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed request on March 2, 1987, and the preliminary permit for Project No. 10086 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell.
Secretary.

[FR Doc. 88-25888 Filed 11-8-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1989

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of Determination of Excess Amount of Petroleum Violation Escrowed Amounts Pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties and to meet other commitments. Notice is hereby given that $57,218,170.88 of the amounts currently in escrow is determined to be excess funds for fiscal year 1989 and will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter "PODRA"), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, establishes certain procedures for the disbursement of oil overcharge funds collected by the Department of Energy pursuant to the Emergency Petroleum Allocation Act of 1973 ("EPAA") or the Economic Stabilization Act of 1970 ("ESA"). These funds are moneys obtained to remedy actual or alleged violations of such Acts.

PODRA requires the Department of Energy (DOE), through the Office of Hearings and Appeals, to conduct proceedings under 10 CFR Part 205, Subpart V, to accept claims for restitution and to refund these oil overcharge moneys to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in refund proceedings and to make this excess available to state governments for use in four energy conservation programs. The determination is required to be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the DOE's Office of Hearings and Appeals.

Notice is hereby given that based on currently available information, $57,218,170.88 is in excess of the amount that is needed to make restitution to injured persons.

To arrive at that figure, the Office of Hearings and Appeals has reviewed all accounts in which moneys covered by PODRA are deposited. PODRA generally covers all funds now in escrow which are derived from alleged violations of the EPAA and the ESA. However, PODRA excludes from its procedures three categories of funds. Some funds currently in escrow have been identified for indirect restitution in orders issued prior to enactment of PODRA. Other funds are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., July 7, 1986). Those classes of funds are not subject to the procedures set forth in PODRA. In addition, a relatively small amount of oil overcharge funds is currently subject to the control of the Department's Economic Regulatory Administration, which has generally found that none of those funds are currently excess. As of September 30, 1988, the total amount subject to the PODRA procedures was $428,748,927.70.

The Office of Hearings and Appeals has employed the following methodology to determine the excess amount of PODRA funds. We took special account of the provision of PODRA which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution." In accordance with our prior practice, in

major refiner proceedings where refund claims are not yet being accepted, we have reserved 75 percent of the funds for direct restitution to injured persons. The remainder is excess.[1] For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all remaining funds are excess. In proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims, and established reserves sufficient to pay the entire amount of all claims. The amount of those reserves also includes all refunds ordered by the Office of Hearings and Appeals since September 30, 1988. Small amounts of interest accrued after September 30, 1987, in accounts that were closed in the fiscal year 1988 PODRA determination (52 FR 43657 (1987)) are included as part of the "excess" for fiscal year 1989. In accordance with section 3002(c)(3) of PODRA, escrowed amounts are not deemed "excess" where they were designated, prior to the enactment of PODRA, for disbursement to specific persons or classes of persons as indirect restitution. No "other commitments" are reflected in the reserves. The ERA has brought to our attention one case, involving a 1982 settlement with Macmillan Ring-Free Oil Company (Consent Order No. 960S00053Z), where the amount transferred as excess under PODRA in 1986 left insufficient funds for the ERA to pay certain refund recipients identified in the consent order. We are therefore making an adjustment in this notice to replenish the Macmillan subaccount so that these identified refund recipients may be paid.

The total escrow account equity subject to PODRA is $428,748,927.70. The total amount needed as reserves for direct restitution in those cases is $371,530,756.82. When the total amount of reserves is subtracted from the total escrow account equity subject to PODRA, the remainder, $57,218,170.88, is the amount in fiscal year 1989 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each refund case within the jurisdiction of the Office of Hearings and Appeals the total product equity eligible for distribution under PODRA, the amount reserved for direct restitution, and the "excess" amount. Appendix B reflects information supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, $57,218,170.88 will be transferred to a separate account within the United States Treasury and made available to the states for use in the four designated energy conservation programs in the manner prescribed by the Act.

Date: November 3, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[1] In the case of the Texaco Inc. refund proceeding, the actual amount that is subject to PODRA is disputed by commenters, see 53 FR 32929 (1988), and will be resolved in the relevant Subpart V refund proceeding. The determination to set aside 75 percent of $120 million in Texaco funds is a preliminary determination only for purposes of this proceeding.

APPENDIX A—DETERMINATION OF EXCESS PETROLEUM VIOLATION ESCROW FUNDS FOR FISCAL YEAR 1989

Name	OHA case Number	Consent order Number	Total product equity as of Sept. 30, 1988	Funds available under PODRA for fiscal year 1989
Texaco Inc	KEF-0120	RTXE006A1W	$120,038,411.10	$30,000,000.00
Howard Oil Co	KEF-0008	240H00280Z	10,367,980.92	10,367,980.92
Getty Oil Co	HEF-0209	RGEA00001Z	17,634,872.07	9,000,000.00
CONOCO	HEF-0010	RCOA00001Y	1,467,779.52	1,467,779.52
Saber Energy, Inc	HEF-0220	6D0S00037Z	1,386,654.33	1,386,654.33
Aminoil U.S.A., Inc	HEF-0007	740V01259Y	10,126,591.61	1,022,778.00
Suburban Propane Gas Corp	KEF-0038	733V02010Z	1,489,185.92	1,000,000.00
Bak Ltd	HEF-0034	320H00043Z	428,319.10	428,319.10
Anchor Gasoline Corp	KEF-0120	740S01247W	3,000,000.00	300,000.00
Smith, C.K. & Co	HEF-0172	111H00028Z	299,861.28	299,861.28
UPG, Inc	KEF-0026	641S00123Z	240,725.66	240,725.66
Good Hope Refineries, Inc	HEF-0211	150S00154Z	182,877.24	182,877.24
Howell-Quintana	HEF-0212	610S00068Z	171,953.40	171953.40
Thriftyman, Inc	KEF-0018	610H10449Z	162,176.06	162,176.06
Husky Oil Co	HEF-0213	820S00007Z	151,609.67	150,043.67
U.S.A. Petroleum Corp	HEF-0500	960S00093Z	132,239.60	132,239.60
Tenneco Oil	BEF-0073	RTNA00001Y	127,988.14	127,988.14
Leo's-Winstead's	HEF-0114	710H01376Z	98,729.18	98,729.18
APCO Oil Corp	HEF-0008	660S00632Y	72,307.82	72,307.82
Gibbs Industries, Inc	HEF-0079	110H00494Z	70,069.66	70,069.66
Power Pak Co., Inc	HEF-0155	610H10452Z	122,314.04	70,000.00
Jay Oil Co	HEF-0101	6C1H00209Z	65,304.27	65,304.27
Richardson, Sid	BEF-0022	6D0V00025Y	51,276.60	51,276.60
Northwest Pipeline	HEF-0264	710V03015Z	46,966.64	46,966.64
Cranston Oil Service Co., Inc./Galego	KEF-0029	111K00123Z	46,065.42	46,065.42
Knutson, Marlen L	HEF-0110	000H00422Z	45,498.63	45,498.63
Keller Oil Co., Inc	HEF-0103	720H00598Z	40,740.98	40,740.98
Navajo Refining Co	HEF-0217	672S00136Z	27,629.52	27,629.52
Clean Machine, Inc	KEF-0097	999K90079Z	24,103.57	24,103.57
Quaker State Oil	HEF-0219	340S00352Z	23,527.53	23,527.53
Kent Oil & Trading Co	HEF-0578	940X00232Z	23,481.03	23,481.03
South Hampton Refining	HEF-0222	6E0S00002Z	21,958.81	21,958.81
Marine Petroleum Co	HEF-0122	720H00567Z	20,544.29	20,544.29
Arkansas Louisiana Gas Co	HEF-0201	641S00255Z	18,110.82	18,110.82
GCO Minerals Co	HEF-0570	NGCP00001Z	16,231.84	16,231.84
Appalachian Flying Service	HEF-0028	432K00435Z	15,697.55	15,697.55
Bubble Machine	HEF-0514	999K90040Z	12,859.05	12,859.05
Oceana Terminal Corp	HEF-0142	240H00361Z	12,276.63	12,276.63
King & King Enterprises, Inc	HEF-0108	710H02500Z	12,133.65	12,133.65

DETERMINATION OF EXCESS PETROLEUM VIOLATION ESCROW FUNDS FOR FISCAL YEAR 1989—Continued

Name	OHA case Number	Consent order Number	Total product equity as of Sept. 30, 1988	Funds available under PODRA for fiscal year 1989
Perta Oil	HEF-0148	930H00088Z	11,905.80	11,905.80
Pyrofax Gas Corp	HEF-0157	641T00099Z	11,803.49	11,803.49
Richardson Ayres Jobber	HEF-0166	640H00354Z	11,720.41	11,720.41
Quarles Petroleum	HEF-0158	N00H00905Z	11,557.86	11,557.86
Sigmor Corp	HEF-0581	6D0S00091Z	9,487.22	8,487.22
Elm City Filling Stations, Inc	HEF-0067	150H00126Z	9,027.90	9,027.90
Union Texas Petroleum Corp	HEF-0009	6E0S00075Y	8,609.69	8,609.69
ONEOK, Inc	HEF-0571	740V01406Z	8,528.18	8,528.18
Swifty Oil Co	HEF-0175	550H00337Z	8,378.88	8,378.88
Gull Industries, Inc	HEF-0085	N00SD0001Z	7,684.07	7,684.07
La Gloria Oil and Gas Co	HEF-0210	641S00234Z	7,647.91	7,647.91
Lee Garrett Chevron	KEF-0040	999K90057Z	7,426.31	7,426.31
Product Tracking—PODRA		999DOE005W	7,366.80	7,366.80
Crystal Oil Co	HEF-0204	641S00098Z	5,956.19	5,956.19
Box, Cloyce K	HEF-0041	600H00037Z	4,872.33	4,872.33
Farstad Oil Co	HEF-0567	850H00018Z	3,876.51	3,876.51
Lewtex Oil and Gas Co	BEF-0033	6D0V00020Y	3,512.73	3,512.73
Alemany Chevron Service Center	KEF-0023	999K90059Z	3,446.99	3,446.99
Eastern of New Jersey	HEF-0065	240H00441Z	3,366.53	3,366.53
Ferrell Companies, Inc	HEF-0587	710T00075Z	3,252.30	3,252.30
Gary Energy Co	HEF-0245	810V00003Z	3,116.38	3,116.38
Car Wash Service	HEF-0516	999K90047Z	2,795.34	2,795.34
Pride Refining, Inc	HEF-0218	6D0S00036Z	2,532.78	2,532.78
Franks Petroleum	HEF-0208	641S00421Z	2,526.09	2,526.09
Inland USA, Inc	HEF-0096	720H00563Z	2,447.96	2,447.96
Consumer Oil Co	HEF-0055	930H00097Z	2,088.56	2,088.56
Tresler Oil Co	KEF-0019	530H00449Z	1,936.33	1,936.33
Southern Union	HEF-0223	673S00336Z	1,828.82	1,828.82
McCleary Oil Co	HEF-0127	310H00439Z	1,735.46	1,735.46
Arapaho Petroleum, Inc	HEF-0231	710V03019Z	1,716.86	1,716.86
Central Oil Co	HEF-0047	110H00300Z	1,694.94	1,694.94
Gull Industries, Inc	HEF-0086	010H00056Z	1,658.75	1,658.75
MAPCO, Inc	HEF-0258	740V01246Z	1,296.99	1,296.99
Allied Materials Corp. & Excel	HEF-0200	660S00302Z	1,285.11	1,285.11
Lucia Lodge	HEF-0119	910K00133Z	1,231.17	1,231.17
Inman Oil Co	HEF-0097	720H00557Z	1,150.33	1,150.33
Pasco Petroleum, Inc	HEF-0146	000H00442Z	737.30	737.30
Martin Oil Service, Inc	HEF-0123	570H00200Z	667.72	667.72
St. James Resources	HEF-0100	110H00487Z	612.80	612.08
Lowe Oil Co	HEF-0118	710H01379Z	505.85	505.85
Indian Oil Co., Inc	HEF-0095	132H00243Z	470.30	470.30
Dalco Petroleum	HEF-0060	660T00642Z	430.96	430.96
Arkansas Valley Petroleum	HEF-0029	660H10655Z	422.80	422.80
Gull Industries	HEF-0084	010H00357Z	361.33	361.33
Eagle Petroleum	HEF-0243	710V03025Z	351.65	351.65
Parman Oil Corp	HEF-0145	430H00219Z	338.66	338.66
Wellen Oil Co	HEF-0584	240H00071Z	296.15	296.15
Hicks Oil & Hick Gas	HEF-0091	570E00128Z	263.90	263.90
Texas Gas & Exploration	HEF-0274	6E0V00015Z	247.81	247.81
Tipperary Oil Co	HEF-0277	670V00323Z	247.79	247.79
Arkla Chemical Corp	HEF-0030	641H00364Z	225.29	225.29
Stinnes Oil	HEF-0174	240H00519Z	161.36	161.36
Tarricone, Inc	HEF-0177	240H00291Z	155.36	155.36
Leathers Oil Co	HEF-0113	000H00426Z	148.64	148.64
Petroleum Sales/Service	HEF-0151	340H00488Z	142.97	142.97
Lewis Oil Co	HEF-0115	340H00493Z	135.28	135.28
Propane Gas & Appliance Co	HEF-0156	420E00206Z	122.24	122.24
Missouri Terminal Oil Co	HEF-0131	720H00562Z	115.88	115.88
Malco Industries	HEF-0121	530H00435Z	99.90	99.90
Ramos Oil Co., Inc	HEF-0159	910H00144Z	97.14	97.14
Belcher, Leonard E., Inc	HEF-0586	151H00003Z	88.50	88.50
Resources Extraction Process	HEF-0574	740V01409Z	79.48	79.48
Little America Refining	HEF-0215	830S00012Z	65.48	65.48
Port Oil Co	HEF-0153	420H00278Z	59.02	59.02
Luke Brothers, Inc	HEF-0120	660E00075Z	57.64	57.64
Plateau, Inc	HEF-0272	733V02013Z	52.41	52.41
Lakes Gas Co., Inc	HEF-0112	510E00134Z	38.56	38.56
Peterson Petroleum	HEF-0149	240H00491Z	35.44	35.44
Earls Broadmoor	HEF-0566	640Z00357Z	27.84	27.84
Steve's Exxon & Towing Service	HEF-0550	999K90036Z	22.62	22.62
Post Petroleum	HEF-0154	910H00145Z	18.62	18.62
McClure's Service Station	HEF-0128	340H00486Z	18.24	18.24
Lockheed Air Terminal, Inc	HEF-0117	930H00199Z	18.11	18.11
Reynolds Oil Co	HEF-0164	810H00324Z	16.42	16.42
Bud's Exxon Service	HEF-0511	999K90038Z	13.91	13.91
Pacific Northern Oil	HEF-0144	010H00028Z	7.53	7.53
Moyle Petroleum	HEF-0133	810H00300Z	6.92	6.92
White Petroleum	HEF-0196	550H00317Z	5.40	5.40

DETERMINATION OF EXCESS PETROLEUM VIOLATION ESCROW FUNDS FOR FISCAL YEAR 1989—Continued

Name	OHA case Number	Consent order Number	Total product equity as of Sept. 30, 1988	Funds available under PODRA for fiscal year 1989
Amtel, Inc	HEF-0027	720H00552Z	1,146,573.42	0.00
Atlantic Richfield Co (ARCO)	HEF-0591	RARH00001Z	43,083,305.80	0.00
Beacon Oil Co	HEF-0203	910S00008Z	2,400,266.89	0.00
Butler Fuel Corp	KEF-0094	110E00421Z	54,901.69	0.00
Century Refining Co	BEF-0041	710V02C06Y	58,039.30	0.00
Crown Central Petroleum Corp	KEF-0044	RCWA00000Z	6,764,571.36	0.00
Dorchester Gas Corp	HEF-0559	670S00113Z	1,267,563.01	0.00
Earth Resources	HEF-0205	431S00341Z	319,397.11	0.00
Eastern Oil Co	KEF-0085	412H00040Z	150,764.41	0.00
Edgington Oil Co	KEF-0003	930S00173Z	1,932,487.43	0.00
Elias Oil Co	KEF-0022	412H00105Z	130,053.95	0.00
Empire Gas Corp	KEF-0048	720T00521Z	1,101,916.62	0.00
Enron Corp	KEF-0116	730V00221Z	48,325,342.50	0.00
Evett Oil Co	KEF-0020	400H00221Z	74,027.97	0.00
Exxon Corp	KEF-0087	REXL00201Z	23,917,413.66	0.00
Gulf Oil Corp	HEF-0590	RGFA00001Z	48,128,403.58	0.00
Gulf Oil Corp	DFF-0001	NOOR00007Y	26,924,354.87	0.00
Indian Wells Oil Co	KEF-0103	710V02002Z	1,574,693.52	0.00
Key Oil Co	HEF-0106	430H00477Z	9,131.55	0.00
Ladd Petroleum Corp	KEF-0112	810C00341Z	2,966,585.02	0.00
Marathon Petroleum Co	KEF-0021	RMNA00001Z	6,399,640.80	0.00
Martin Oil Co	HEF-0124	910T00120Z	118,137.39	0.00
Maxwell Oil Co	HEF-0125	000H00425W	10,632.08	0.00
McClure Oil Co	KEF-0009	660E00083Z	17,892.68	0.00
MCO Holdings Inc & MPC, Inc	KEF-0108	831V00016Z	804,816.32	0.00
Mobil Oil Corp	HEF-0508	RMOA00001Z	4,639,804.05	0.00
Murphy Oil Corp	KEF-0095	RMUH01983Z	5,882,428.19	0.00
National Propane Corp	HEF-0135	270T00002Z	11,710.66	0.00
Northeast Petroleum Corp	HEF-0137	110H00334Z	641,946.78	0.00
Northeast Petroleum Corp	HEF-0138	120H00491Z	357,708.93	0.00
O'Connell Oil Co	HEF-0141	110H00513Z	5,718.55	0.00
O'Neals Service Center	KEF-0117	999K90056Z	3,897.84	0.00
Pacer Oil Co	HEF-0143	412H00172Z	19,482.75	0.00
Pedersen Oil, Inc	HEF-0147	000H00418Z	26,846.23	0.00
Petrolane-Lomita Gasoline Co	HEF-0269	940V00195Z	52,991.45	0.00
Petroleum Heat & Power	HEF-0150	110H00530Z	101,104.58	0.00
Placid Oil Co	KEF-0007	6D0S00005Z	1,965,429.89	0.00
Plaquemines Oil Sales Inc	KEF-0039	640H00174Z	518,669.96	0.00
Point Landing Fuel Co	HEF-0152	640H00175Z	128,622.54	0.00
Power Test Petrol Distribution	KEF-0042	240H00499Z	471,344.46	0.00
Reinauer Petroleum Co., Inc	KEF-0110	240H00492Z	313,341.03	0.00
Sauvage Gas Service Co., Inc	KEF-0024	710H06008Z	471,893.11	0.00
Shell Oil Co	KEF-0093	RSHA00001Z	16,772,985.63	0.00
Total Petroleum, Inc	KEF-0133	540S00227Z	2,567,736.60	0.00
True Oil Co	HEF-0557	733V02019Z	1,779,283.42	0.00
Winston Refining Co	HEF-0589	6D0S00006Z	129,907.62	0.00
Witco Chemical Corp	HEF-0227	240S00054Z	3,333,913.78	0.00
World Oil Co	KEF-0005	960S00104Z	2,265,820.81	0.00
MacMillan Ring-Free Oil Co	HEF-0506	960S00053Z	119,912.29	(247,180.00)
Totals			428,748,927.70	57,218,170.88

Appendix B

October 26, 1988.

Memorandum for: George B. Breznay, Director, Office of Hearings and Appeals

Subject: *ERA Input for the PODRA Section 3003(c) Report*

We have completed our review of the funds held in escrow as of September 30, 1988, which have not been petitioned under Subpart V. This review was to identify the escrow amount in excess of that necessary to make restitution to persons or classes of persons in accordance with Section 3003(b)(1) of the Petroleum Overcharged Distribution and Restitution Act of 1986. Once final payments are made into an escrow account, a Subpart V petition is filed with your office. Consequently, the escrow accounts that we examined still have balances due. Many of these accounts are for firms in bankruptcy or have been referred to the Department of Justice for collection. Since the extent of possible claims and amounts that will be available to satisfy the claims are not known at this time, it would be inadvisable to consider any of these funds excess.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration

[FR Doc. 88-25890 Filed 11-8-88; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Federal Hydroelectric Power—Power Allocation Policy

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Opportunity to Provide Comments on Specific Phrases in the Power Allocation Policy.

SUMMARY: The Southwestern Power Administration (SWPA) published the "Policy for the Allocation of Power and Energy from Federal Hydroelectric Power Projects" in the **Federal Register** (52 FR 29881) dated August 12, 1987. Subsequent to that publication, SWPA received several comments which expressed concern over a perceived lack of opportunity to comment on two particular phrases in the policy. This publication provides interested parties the opportunity to comment on those phrases as the phrases pertain to the allocation policy.

The first phrase appears in the last sentence of the first paragraph of the summary on page 29881 in the **Federal Register**. That sentence reads as follows: "As a result of these changing conditions, Southwestern Power Administration (SWPA) believed a policy was needed to address the allocation of power and energy that may become available for marketing from existing and new, Federally and non-Federally funded, hydroelectric power projects." The phrase "from existing" caused concern with some members of the public. We added that phrase because new power from existing resources occasionally becomes available for allocation from a variety of sources including, but not limited to, new hydroelectric power development at existing projects, upgrading of equipment, and changes in operational agreements. Power may also become available if an existing customer relinquishes or loses its allocation.

The second phrase appears in the second sentence of SWPA's response to comment number 11 located on page 29883 in the **Federal Register**. The sentence reads as follows: "While the Government is presently committed to an announced policy of not removing a Federal allocation, the Government will not guarantee the disposition of its resources beyond present contract commitments." The phrase "the Government will not guarantee the disposition of its resources beyond present contract commitments" was the cause of concern. This phrase refers to the manner in which allocated power is delivered, reflecting the type of service to be recieved by a customer. There is no assurance that the storage now available in the hydroelectric power projects will be available for future hydroelectric power generation, nor is there assurance that the present hydroelectirc power plant equipment, transmission facilities or systems, wheeling arrangements, etc., will be available beyond present contract commitments. Although SWPA fully intends to renew power allocations when existing contracts expire, provided Federal capacity is available, SWPA cannot guarantee the extension of existing contracts.

Neither of these phrases is intended to imply that an existing power allocation may be withdrawn at the end of contract commitments. Present announced policy is that capacity power allocations will continue to be honored beyond present contract commitments (with available resources) under SWPA's allocation policy, subject to appropriate administrative due processes, recognizing pubic laws and the policies of the Department of Energy.

SWPA coordinated the full development of the August 12, 1987, allocation policy with its customers through their Southwestern Power Resources Association.

DATE: Comments must be submitted on or before December 9, 1988.

ADDRESS: Comments may be mailed to: Francis R. Gajan, Director of Power Marketing; Southwestern Power Administration; U.S. Department of Energy; P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director of Power Marketing; (918) 581–7529.

J.M. Shafer,

Administrator, Southwestern Power Administration.

[FR Doc. 88–25891 Filed 11–8–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180792; FRL–3473–2]

Receipt of an Application for a Specific Exemption to Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") for use of avermectin B_1 (Agrimec 0.15 EC Miticide/Insecticide™) to control leafminers (*Liriomyza trifolii* and *L. sativae*) on 56,500 acres of tomatoes in Florida. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and < 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before November 25, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180792" should be submitted by mail to:

Public Docket and Freedom of Information Section,
Field Operations Division (TS–757C),
Office of Pesticide Programs,
Environmental Protection Agency,
401 M St., SW.,
Washington, DC 20460.
In person, bring comments to:
Rm. 246, Crystal Mall #2,
1921 Jefferson Davis Highway,
Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:
Libby Pemberton,
Registration Division (TS–767C),
Office of Pesticide Programs,
Environmental Protection Agency,
401 M St., SW.,
Washington, DC 20460.
Office location and telephone number:
Rm. 716, Crystal Mall #2,
1921 Jefferson Davis Highway,
Arlington, VA,
(703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as AGRI-MEK 0.15 EC Miticide/Insecticide™, by MSD ABVET, a division of Merck & Co., Inc., on tomatoes in Florida. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 8 to 16 ounces of product per acre per application. A maximum of ten applications will be made per acre per crop season. Treatment would not be allowed 3 days prior to harvest. Applications would be made from January 1, 1989 through July 31, 1989.

The Applicant indicates that many factors have contributed to the frequency and severity of this pest problem. Among these factors are the intensity of plantings within the producing areas, the climatic conditions during the growing season, the large number of alternate hosts surrounding the production areas, the complex pest management requirements of other pests of tomato and most importantly the increasing difficulty of control due to resistance of the pest to existing compounds. Leafminer control has been accomplished in the past by a variety of pesticides including: monocrotophos, diazinon, naled, methamidophos, dimethoate, azinphos-methyl, oxamyl, and permethrin. Even though some of these compounds are still being used, once populations exceed threshold level the effectiveness of any of these compounds is lost, according to the Applicant.

The Applicant indicates that without adequate control of the leafminers a potential loss of $25 to 50 million of income to Florida tomato producers could occur from this pest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: October 26, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-25932 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180790; FRL-3472-8]

Emergency Exemptions; Dicamba, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 11 States listed below and 10 crisis exemptions initiated by various States. These exemptions, issued during the month of August, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of dicamba on cotton to control redvine; August 19, 1988, to December 1, 1988. (Robert Forrest)

2. California Department of Food and Agriculture for the use of mevinphos on ornamental pumpkins to control cotton melon and black bean aphids; August 30, 1988, to October 31, 1988. (Libby Pemberton)

3. California Department of Food and Agriculture for the use of formetanate hydrochloride on strawberries to control mites; August 31, 1988, to August 30, 1989. (Jim Tompkins)

4. California Department of Food and Agriculture for the use of hexakis on mixed melons and squash to control spider mites; August 3, 1988, to September 30, 1988. (Robert Forrest)

5. Delaware Department of Agriculture for the use of sodium chlorate on southern peas as a desiccant; August 15, 1988, to October 31, 1988. (Robert Forrest)

6. Kansas State Board of Agriculture for the use of bifenthrin on field corn to control Banks grass mites and two-spotted spider mites; August 1, 1988, to September 30, 1988. (Gene Asbury)

7. Louisiana Department of Agriculture and Forestry for the use of paraquat on grain sorghum as a desiccant; August 31, 1988, to November 1, 1988. (Robert Forrest)

8. Maine Department of Agriculture for the use of paraquat dichloride on dry edible beans as a desiccant/harvest aid; August 3, 1988, to September 14, 1988. (Robert Forrest)

9. Michigan Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrip; August 5, 1988, to August 30, 1988. (Gene Asbury)

10. Mississippi Department of Agriculture and Commerce for the use of dicamba on cotton to control redvine; August 19, 1988, to December 1, 1988. (Robert Forrest)

11. New York Department of Environmental Conservation for the use of sodium chlorate on dry beans as a desiccant; August 19, 1988, to October 1, 1988. (Robert Forrest)

12. North Dakota Department of Agriculture for the use of sodium chlorate on dry beans as a desiccant; August 23, 1988, to October 1, 1988. (Robert Forrest)

13. Texas Department of Agriculture for the use of cyromazine on bell, chili, and jalapeno peppers to control vegetable leafminer; August 19, 1989. (Robert Forrest)

Crisis exemptions were initiated by the:

1. Illinois Department of Agriculture on August 1, 1988, for the use of profenofos on soybeans to control spider mites. This program has ended. (Libby Pemberton)

2. Illinois Department of Agriculture on August 1, 1988, for the use of propargite on soybeans to control spider mites. This program has ended. (Libby Pemberton)

3. Iowa Department of Agriculture on August 3, 1988, for the use of propargite on soybeans to control spider mites. This program has ended. (Libby Pemberton)

4. Minnesota Department of Agriculture on August 16, 1988, for the use of sodium chlorate on dry beans as a desiccant. This program has ended. (Robert Forrest)

5. Minnesota Department of Agriculture on August 1, 1988, for the use of propargite on soybeans to control spider mites. This program has ended. (Libby Pemberton)

6. Mississippi Department of Agriculture and Commerce on August 8, 1988, for the use of iprodione on rice to control sheath blight. This program has ended. (Gene Asbury)

7. Ohio Department of Agriculture on August 3, 1988, for the use of profenofos on soybeans to control spider mites. This program has ended. (Jim Tompkins)

8. Oregon Department of Agriculture on August 22, 1988, for the use of chlorpyrifos on hops to control aphids. This program has ended. (Robert Forrest)

9. South Dakota Department of Agriculture on August 4, 1988, for the use of disulfoton on soybeans to control spider mites. This program has ended. (Jim Tompkins)

10. Wisconsin Department of Agriculture, Trade, and Consumer Protection on August 5, 1988, for the use of sodium chlorate on oats as a desiccant. This program has ended. (Robert Forrest)

Authority: 7 U.S.C. 136.

Dated: October 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-25931 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180793; FRL-3473-1]

Pesticide Programs; Annual Report on Crisis Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked during the fiscal year 1988. State and Federal agencies issued 47 crisis exemptions authorizing unregistered pesticide uses in accordance with the regulations in 40 CFR 166.40 pursaunt to section 18 of FIFRA. During this same time period, EPA revoked the right to utilize the crisis provisions for four pesticide uses. This annual report is required under 40 CFR 166.49.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: The regulations pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act require EPA to issue annually a notice for publication in the **Federal Register** which summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked.

Subpart C of 40 CFR Part 166 sets forth the regulations dealing with crisis exemptions. This Subpart allows the head of a Federal or State agency to issue a crisis exemption in a situation involving an unpredictable emergency situation when: (1) An emergency condition exists; and (2) the time element with respect to the application of the pesticide is critical and there is not sufficient time either to request a specific, quarantine, or public health exemption or, if such a request has been submitted, for EPA to complete review of the request. This Subpart also provides for EPA review of crisis exemptions and revocation of individual crisis exemptions or the authority of a State and Federal agency to utilize the crisis provisions.

During the fiscal year 1988 (October 1, 1987 through September 30, 1988), 47 crisis exemptions were declared by State and Federal agencies. A breakdown of the crisis declarations by State/Federal agencies follows:

State/ Federal agency	No. of crisis exemptions	Pesticide	Site
California	5	fosetyl-al	Lettuce.
		Sethoxydim	Lettuce.
		Sethoxydim	Broccoli.
		Sethoxydim	Cauliflower.
		Sethoxydim	Dry beans.
Florida	3	Benomyl	Cabbage.
		Iprodione	Cabbage.
		Propiconazole.	Sweet corn.
Georgia	1	Permethrin	Southern peas.
Illinois	2	Propargite	Soybeans.
		Profenofos	Soybeans.
Indiana	1	Propargite	Soybeans.
Iowa	2	Propargite	Soybeans.
		Disulfoton	Soybeans.
Louisiana	1	TPTH	Soybeans.
Maryland	1	Glyphosate	Field corn.
Michigan	3	Diazinon	Soybeans.
		Profenofos	Soybeans.
		Propargite	Soybeans.
Minnesota	5	Dimethoate	Soybeans.
		Disulfoton	Soybeans.
		Propargite	Soybeans.
		Sethoxydim	Lupines.
		Sodium chlorate.	Dry beans.
Mississippi	1	Iprodione	Rice
New York	1	Propachlor	Dry bulb onions.
North Carolina.	1	Metalaxyl	Grapes.
North Dakota.	1	Disulfoton	Soybeans.
Oklahoma	1	Propiconazole.	Peanuts.
Ohio	1	Profenofos	Soybeans.
Oregon	3	Chlorpyrifos	Hops.
		Permethrin	Raspberries.
		Sethoxydim	Snap beans.
South Dakota.	1	Disulfoton	Soybeans.
Texas	4	Ethyl parathion.	Rape.
			Peanuts.
		Propiconazole.	Rice.
		Iprodione	Leafy vegetables.
		Permethrin	
USDA	4	Calcium cyanide.	Beehives.
			Beehives.
		Fluvalinate	Bananas.
		Methyl bromide.	Sunflower seeds.
		Ethylene oxide.	
Washington	2	Baythroid	Pears.
		Disulfoton	Hops.
Wisconsin	3	Propargite	Soybeans.
		Sethoxydim	Lupines.
		Sodium chlorate.	Oates.

During the 1988 fiscal year, EPA revoked the authority of Massachuesetts to utilize the crisis provisions for the use of sodium fluoaluminate on potatoes; Louisiana to utilize the crisis provisions for the use of TPTH on soybeans; and Texas and Oklahoma to utilize the crisis provisions for use of propiconazole on peanuts.

Authority: 7 U.S.C. 136.

Dated: October 24, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-25930 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30292; FRL-3472-9]

Fleming Laboratories, Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 9, 1988.

ADDRESS: By mail submit comments identified by the document control number [OPP-30292] and the file number (59981-R) to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Attn: Product Manager (PM) 23, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, Attn: PM 23, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, PM 23, Rm. 237, (703-557-1830).

SUPPLEMENTARY INFORMATION: Fleming Laboratories, Inc., PO Box 34384, Charlotte, NC 28234, has submitted an

application to EPA to register the pesticide product Pro-Gen® Grapefruit Acidity Control Agent, EPA File Symbol 59981-R, containing the active ingredient arsanilic acid at 99.4 percent, pursuant to the provisions of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use only in certain counties of Florida on the fresh market grapefruit to reduce the acidity for the early season market and processed market grapefruit to reduce the acidity for the midseason market. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: October 26, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-25933 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44518; FRL-3474-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on hexafluoropropene (CAS No. 116-15-4) and anthraquinone (CAS No. 84-65-1), submitted pursuant to final test rules, and on 4-chloroaniline (CAS No. 106-47-8) and 2,4-dinitroaniline (CAS No. 97-02-9), submitted pursuant to testing consent orders under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for 2,4-dinitroaniline and 4-chloroaniline was submitted by Hoechst Celanese pursuant to consent orders for these substituted anilines at 40 CFR 799.5000. It was received by EPA on October 20, 1988. Two submissions, one for each chemical, were received. Each describes a micronucleus test in male and female NMRI mice after oral administration. Mutagenicity testing is required by these consent orders.

The primary use for most substituted anilines is as intermediates in dye and pigment production.

Test data for hexafluoropropene was submitted by E.I. du Pont de Nemours and Company, Inc. pursuant to a test rule for fluoroalkenes at 40 CFR 790.1700. It was received by EPA on October 21, 1988. The submission describes a dominant lethal inhalation study in rats with hexafluoropropene. Mutagenicity testing is required by this test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for anthraquinone was submitted by Mobay Corporation pursuant to a test rule at 40 CFR 799.500. It was received by EPA on October 25, 1988. The submission consists of three test reports: (1) Determination of water solubility of anthraquinone; (2) acute toxicity of anthraquinone to rainbow trout (*Salmo gairdneri*) under flow-through conditions, and (3) acute toxicity of anthraquinone to coho salmon (*Oncorhynchus kisutch*) under acute flow-through conditions. Chemical fate and environmental effects testing is required by this test rule.

Anthraquinone is used principally in production of anthraquinone dyes. It also is used as a catalyst by the paper pulping industry.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the submissions' completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44158). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 2, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-25934 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59265; FRL-3473-5]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption. Written comments by:

T 89-2, November 19, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS-59265]" and the specific TME number should be sent to:

Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 410 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89–2

Close of Review Period. December 3, 1988.

Manufacturer. Confidential.

Chemical. (G) Acrylate/acrylonitrile/vinylacetate copolymer.

Use/Production. (S) Laminating adhesive. Prod. range: Confidential.

Date: October 26, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–25935 Filed 11–8–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Interest Rate Swap Reporting Standards

AGENCY: Federal Financial Institutions Examination Council

ACTION: Request for comment.

SUMMARY: This proposal, which pertains to interest rate swap contracts ("swaps"), would preclude al FDIC-insured U.S. commercial banks and FDIC-insured state-chartered savings banks, for purposes of the Reports of Condition and Income (Call Reports), from recognizing arrangement fees and spread income at the inception of a swap. Instead, this income would be recognized over the life of the swap. It also would require that subsequent changes in the market value of swaps, except for most swaps accounted for as hedges, be reflected in income during the period in which the changes occur. This proposed Call Report instruction has been developed jointly by the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Board ("FRB"), and the Federal Deposit Insurance Corporation ("FDIC"), under the auspices of the Council. The instruction will be effective for swap contracts entered into after December 31, 1988, and the first Call Report affected will be the Call Report for March 31, 1989.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: All comments should be mailed to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G St., NW., Suite 701, Washington, DC 20006, or delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: David C. Motter, Special Assistant to the Chief National Bank Examiner, (202/447–1587), Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

Board: Rhoger H. Pugh, Manager, Division of Banking Supervision and Regulation, (202/728–5883), Board of Governors of the Federal Reserve System, 20th & Constitution Avenue NW., Washington, DC 20551.

FDIC: Robert F. Storch, Chief, Securities and Accounting Section, Division of Bank Supervision, (202/898–8906), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: This proposed Call Report instruction was developed on a joint interagency basis by the OCC, FRB, and the FDIC due to concerns over the lack of a consistent authoritative standard regarding the recognition of swap income. The agencies are not relying upon generally accepted accounting principles as the reporting standard for these transactions because there is an overall lack of authoritative accounting guidance pertaining to swap income and such guidance is not likely to be forthcoming from accounting rulemaking authorities for some time. When and if accounting rulemaking authorities adopt authoritative guidance for the recognition of swap income, the banking agencies will reconsider the appropriateness of any reporting standard for swaps that becomes inconsistent with generally accepted accounting principles.

Proscription on the Immediate Recognition of Fees and Spreads

In the absence of specific authoritative accounting pronouncements in this area, banks have generally followed two basic approaches in accounting for swap income. One method recognizes the arrangement fee and the discounted present value of the spread on a portfolio of swaps, net of a provision for related credit risk and administrative costs, as profit at the inception of the swap. The second method amortizes the arrangement fees and takes the spread into income over the life of the swap, i.e., income is recognized as the swap payments are accrued each period.

The Council believes the second method of income recognition is the more appropriate method for Call Report purposes. Swap income should not be recognized at inception, since that practice is not in accordance with the fundamental accounting principle that income earned as a result of a contractual obligation should be recognized over the life of the contract. The logic that the income is earned over that time period rather than at the inception of the swap is supported by the fact that, in the case of a bank acting as a principal in a swap contract, credit risk, interest rate risk, and administrative costs are incurred over the life of the contract. Therefore, since costs and risks are incurred by the bank over the swap's life, it is appropriate that the income from the swap be recognized over the life of the swap.

The immediate recognition of income leads to higher reported income and capital at the time a swap is booked. However, substantial risks remain over the life of the contract and the recorded income may not be ultimately realized due to credit losses or adverse interest rate changes. Consequently, the Council believes that income recognition at the swap's inception is an unsafe or unsound banking practice.

Recording Changes In Market Value After Inception

The second aspect of the proposed Call Report instruction deals with whether changes in the market values of swaps after their inception should be recorded in income in the period in which they occur. The value of an imperfectly matched swap portfolio can change markedly with changes in interest rates, and the value of an individual swap contract is also subject to change if the creditworthiness of the counterparty changes. Therefore, it is important to set a reporting standard that currently records such changes in value. The proposed Call Report instruction would require that changes in the market value of swaps (except most swaps accounted for as hedges) be recorded in the period in which they occur, with the cumulative change in market value being reported in the Report of Condition. Therefore, any losses in value in a bank's swap

portfolio would be reflected in current period income rather than being deferred, thus providing more discipline to banks engaging in the swap market.

Issues for Specific Public Comment

The Council is aware of the current diversity in practice in accounting for swaps. The proposed Call Report instruction would promulgate the accounting considered appropriate for supervisory purposes commensurate with the federal banking agencies' safety and soundness responsibilities. The Council intends to seek general public comment concerning the proposed Call Report instruction and encourages specific comments on the following additional issues:

1. The proposal would require that arrangement fees and spread income be recognized as income over the life of the swap contract. The Council requests comment on whether certain costs directly related to originating a swap contract should be deferred and amortized over the life of the swap, similar to the method prescribed for loan origination costs under FASB Statement No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases". The Council also seeks comment on an alternative to deferring the costs. This alternative is to allow the arrangement fee (but not the spread) to be recorded as income at inception, to the extent it does not exceed the direct costs of originating the related swap contract.

2. The proposed Call Report instruction would require that changes in the market value of swaps subsequent to inception (except most swaps accounted for as hedges) be recognized in income during the period they occur. Market valuation methods that have been used by banks include the following:

a. The present value of the known cash flows from the swap is calculated using as a discount rate the current rate on a Treasury security of equal remaining maturity plus the excess at inception of the swap rate (defined as the mid-point of the fixed rate side's bid and ask rate) over the rate on a Treasury security of equal maturity.

b. The present value of the known cash flows from the swap is calculated using as a discount rate the current swap rate (defined as the mid-point of the fixed rate side's bid and ask rate) on a swap with equal remaining maturity.

c. The present value of the known cash flows from the swap is calculated using as discount rates the zero coupon rates derived from the current swap yield curve. Swap yields for each maturity are defined as the midpoint of the fixed rate side's bid and ask rates.

The Council requests comment on which of these valuation methods is most appropriate. The Council also requests details on alternatives to the above methodologies that may be more appropriate in all or certain circumstances.

Proposed Instruction

The text of the proposed instruction follows:

Proposed Call Report Glossary Entry for Interest Rate Swaps

An interest rate swap, in its simplest form, entails an agreement between two parties ("counterparties") to exchange interest payments for a specified period of time. These interest payments are calculated on a specified principal value, called the notional amount. Ordinarily, counterparties are only obligated to pay to each other the interest due on this amount and are not obligated to repay the underlying or related principal.

Interest rate swaps are often used to, in effect, transform the interest rates associated with assets or liabilities from fixed-rate to floating-rate or vice versa, or from one floating rate index to another. Banks generally engage in interest rate swaps either to hedge their exposures to interest rate risk or to generate fee income by acting as intermediaries between other swap participants or by trading in swaps.

Since notional principal amounts are not counterparty obligations for single-currency interest rate swaps, these amounts should not be reported on Schedule RC, Balance Sheet. These amounts should be reported on Schedule RC–L, "Commitments and Contingencies," in Memoranda Item 3, "Notional Value of All Outstanding Interest Rate Swaps," as discussed in the instructions for that schedule.

Some cross-currency interest rate swaps—those involving obligations of the respective parties denominated in different currencies—also obligate the counterparties to exchange principal amounts at maturity. Such principal amounts shall be reported on the FFIEC 031, 032, and 033 as "Commitments to Purchase Foreign Currencies and U.S. Dollar Exchange," in Item 5 of Schedule RC–L (not reported on the FFIEC 034). Such transactions can alter a bank's foreign exchange risk position.

Bank management should evaluate the credit risk associated with interest rate swap activities. An allowance for credit losses should be maintained that is sufficient to cover any estimated credit losses associated with swap activities.

Under interest rate swaps, the amounts of interest receivable and payable should be accrued as of the end of each calendar quarter (or more frequently). The receivable and payable balances relating to a particular swap may be reported net only if a contractual right of offset exists and the swap payments are exchanged on a net basis. The aggreate amounts of receivables and payables should be reported as "Other Assets" and "Other Liabilities," respectively, on Schedule RC-Balance Sheet (Items 11 and 20, respectively) and on Schedule RC–F ("Other Assets," Item 3) and Schedule RC–G ("Other Liabilities," Item 4). For purposes of these reports, receivables and payables shall not be accrued for amounts applicable to periods beyond the report date.

In no case shall income be recognized at the inception of a swap. Arrangement fees must be recognized as income over the life of the swap contract. Spread income, i.e., the difference between future cash receipts and payments for a portfolio of swaps, must be recognized only as accrued for the current period, i.e., not beyond the report date.

A bank's activities using interest rate swaps, both as hedges and non-hedges, are subject to review by examiners. Accordingly, banks must fully document their swap hedging policies and transactions. A pattern of excessive and unsatisfactorily documented hedge swap terminations may lead examiners to conclude that an institution has in effect been trading in swaps and require that the results of such swap activities be restated and reported as swaps not used for hedging purposes.

FASB Statement No. 80, *Accounting for Futures Contracts*, for swaps denominated in one currency, and Statement No. 52, *Foreign Currency Translation*, for swaps denominated in more than one currency, should be consulted for additional information regarding accounting standards to be applied by analogy to interest rate swaps.

Reporting for Hedge Swaps

Swaps that are used to reduce a bank's interest rate risk exposure may be reported as hedges of such risk if, in principle, all of the hedging criteria set forth in FASB Statement No. 80 have been fulfilled. Therefore, for example, the specific item to be hedged must expose the enterprise to price (or interest rate) risk, and the swap must reduce that exposure and be designated as a hedge of that item. Swaps

denominated in more than one currency that are used to reduce a bank's interest rate or foreign exchange risk may be reported as hedges of such risks if, in principle, all of the hedging criteria set forth in FASB Statement No. 52 have been met. However, in no case may swaps used to hedge other swaps be reported as hedges. For example, offsetting swaps for which a bank is acting as an intermediary are not swaps that reduce its interest rate risk exposure.

If the hedge criteria are met, the accounting for the swap shall be related to the accounting for the hedged item so that changes in the market value of the swap are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Therefore, the income or expense from the swap should be reported in Schedule RI, Income Statement, in the same line item as the income or expense from the underlying hedged item. In most cases, the swap's accrued interest income or expense for the period shall adjust the underlying interest income or expense of the hedged item. In addition, the change in the market value of the swap shall be deferred and accounted for as part of the carrying value of the item being hedged, and reflected as an adjustment of the related interest income or expense over the life of the hedged item. However, if the swap hedges an underlying item which is carried at market value (mark to market accounting), a change in the market value of the related swap shall not be deferred but rather should be recognized in income in the period the change in value occurs.

If a swap is accounted for as a hedge (of an underlying item not carried at market value), then the gain or loss on an early termination of the swap shall be defferred, recognized as part of the carrying value of the hedged item, and amortized over the remaining life of the hedged item or the swap, whichever is shorter. Generally, terminations of swaps that are used for hedging purposes should not be significant in relation to the total number or notional amount of swaps that are hedges.

Reporting for Non-Hedge Swaps

For all interest rate swaps that are not reportable as hedges as set forth in the preceding section, the income or expense associated with the accrual of swap receivables and payables shall be reported as "Other Noninterest Income," in Schedule RI (Income Statement), Item 5.f. (item 5.b. on the FFIEC 034), or as "Other Noninterest Expense," in Schedule RI, Item 7.c., as appropriate.

At the first Call Report date following the inception of an interest rate swap, any change in the market value of that swap since its inception shall be recognized in current period income or expense. At each successive Call Report date, any change in the market value of that swap since the previous Call Report date must be recognized in current period income or expense, using a consistent methodology.

These changes in the market value of swaps shall be reflected in Scheduled RI, Item 5.f. (item 5.b. on the FFIEC 034), "Other Noninterest Income," or Item 7.c., "Other Noninterest Expense," as appropriate. The cumulative valuation exposure (asset or liability) on the balance sheet shall be reported as "Other assets," in Schedule RC, Item 11, or as "Other liabilities," in Schedule RC, Item 20.

If a non-hedge swap is terminated early, any amounts the reporting bank receives from or pays to the counterparty on early termination shall be reported net as "Other Noninterest Income," in Schedule RI, Item 5.f. (item 5.b. on the FFIEC 034), or as "Other Noninterest Expense," in Schedule RI, Item 7.c., as appropriate.

November 4, 1988.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 88-25845 Filed 11-8-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010728-001.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland

Hapag Lloyd AG, (operating as Euro-Pacific Service)

Compagnie Generale Maritime

Incotrans B.V., (jointly and severally, operating as Pacific Europe Express)

Synopsis: The agreement (1) reflects the termination of Johnson Scanstar as a participant (joint service) in the basic agreement and (2) amends the terms as it relates to the current parties operations at the assigned Charles P. Howard Terminal.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 4, 1988.

[FR Doc. 88-25846 Filed 11-8-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 003-011218.

Title: The Blue Star Line Breakbulk Division Participation Agreement.

Parties:

The Blue Star Line, Ltd. ("Blue Star")

Sofrana Unilines Wallis SA ("Sofrana")

Synopsis: The proposed agreement would provide for an investment interest by Sofrana in a breakbulk service division to be created by Blue Star.

Filing Party: R. Frederic Fisher, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 4, 1988.

[FR Doc. 88-25908 Filed 11-8-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200056-001.

Title: Maryland Port Administration Terminal Agreement.

Parties:

Maryland Port Administration
Toyota Motor Sales, U.S.A., Inc.

Synopsis: The agreement increases the size of the "office/production shop building" planned for under the basic agreement and adjusts the rental provisions based on the extra construction costs for the building.

Agreement No.: 224-010875-002.

Title: Palm Beach Terminal Agreement.

Parties:

Port of Palm Beach District (District)
Grundstad Terminals, Inc.

Synopsis: The agreement provides for the lease of additional interim facilities and an additional passenger cruise terminal facility at the District's terminal on the north side of Slip No. 1. The agreement's term is for ten years and may be renewed for an additional ten years.

Agreement No.: 224-200047-002.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority
Hapag-Lloyd A.G.
Gulf Container Line BV
Compagnie Generale Maritime

Synopsis: The agreement is amended in accordance with Article 8-E of the Lease to change the consolidated crane rental rate from $23.53 per container loaded on and off vessels (empty or loaded) to $20.51 per pick as reported by Stevedore and Combined Tonnage Center in Houston.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 4, 1988.

[FR Doc. 88-25960 Filed 11-8-88; 8:45am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009420-012.

Title: United States Great Lakes and St. Lawrence River/West Africa Agreement.

Parties:

Black Star Line
Westwind Africa Line, Ltd.

Synopsis: The proposed modification would conform the agreement to the Commission's requirements concerning Docket No. 86-16, service contract provisions.

Agreement No.: 213-010786-003.

Title: Costa/Trasatlantica Space Charter and Sailing Agreement.

Parties:

Costa Container Lines S.p.A.
Compania Trasatlantica Espanola, S.A.

Synopsis: The proposed modification would add d'Amico Societa de Navigazione per Azioni as a party to the agreement. It would also change the name of the agreement to Costa/Trasatlantica/d'Amico Space Charter and Sailing Agreement.

Agreement No.: 203-011219.

Title: Puerto Rico and U.S. Virgin Islands Carriers Discussion Agreement.

Parties:

Zim Israel Navigation Co., Inc.
Nedlloyd Lijnen, B.V.

Synopsis: The proposed agreement would permit the parties to meet, discuss and agree upon rates, charges and practices in the trade from ports and points in Hong Kong, Macao, Korea, Taiwan, Japan, Siberia USSR, the Peoples's Republic of China, Thailand, Vietnam, Democratic Kampuchea (Cambodia), Laos, Burma, the Republic of the Philippines, the Republic of Singapore, the Federation of Malaysia, the Sultanate of Brunei, and the Republic of Indonesia to ports and points in Puerto Rico and U.S. Virgin Islands. Adherence to any agreements reached by the parties would be voluntary. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 4, 1988.

[FR Doc. 88-25907 Filed 11-8-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 3, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

1. *Report Title:* Weekly Report of Assets and Liabilities of Large U.S. Branches and Agencies of Foreign Banks
Agency Form Number: FR 2069
OMB Docket Number: 7100–0030
Frequency: Weekly
Reporters: Large U.S. branches and agencies of foreign banks
Annual Reporting Hours: 12,012
Number of Respondents: 3,432
Average Hours per Response: 3.5
Small businesses are not affected.
General Description of Report
This report is authorized by law (12 U.S.C. 3105). Individual respondent data are exempt from disclosure (5 U.S.C. 552 (b)(4) and (b)(8)).
This report provides current information on credit developments and sources of funds at large U.S. branches and agencies of foreign banks. The data are used to estimate bank credit and nondeposit funds and for analyzing banking and monetary conditions.

2. *Report Title:* Regulation K Requirements for Applications and Prior Notifications
Agency Form Number: FR K–1
OMB Docket Number: 7100–0107
Frequency: On occasion
Reporters: State member and national banks, Edge and Agreement corporations, bank holding companies

Requirement	Estimated No. of responses	Estimated hours per response
Application/Notification to Establish Foreign Branch of Member Banks	7	9.5
Application to Establish, Acquire or Change Control of an Edge Corp., or to Engage in Certain Domestic Activities	10	12.0
Notification to Establish a Branch of an Edge Corp.	3	
Application to Invest in Other Organizations; Notification to Invest in Other Organizations; Notification to Invest in an Export Trading Company	100	18.8

Annual Reporting Hours: 2,067
Small businesses are not affected.
General Description of Report
These reports are required by law (12 U.S.C. 601–604(a), 611–631, 1843 (c)(13), (c)(14) and 1844(c)). Confidential treatment may be requested by the applicant (5 U.S.C. 552).
The K–1 is a compilation of all the applications and prior notification requirements in Regulation K that pertain to the formation of Edge and Agreement corporations and export trading companies and the international and foreign activities of U.S. banking organizations. The requirements are being renewed with certain minor changes to obtain additional information needed in the application process, and to include notifications of change in control of Edge corporations and of investment in a foreign joint venture.

3. *Report Title:* Annual Report of Bank Holding Companies; Bank Holding Company Report of Changes in Investment and Activities
Agency Form Number: FR Y–6, FR Y–6a
OMB Docket Number: 7100–0124
Frequency: Annual; on occasion
Reporters: Bank holding companies
Annual Reporting Hours: 53,464
Estimated Number of Respondents: 6,433 (FR Y–6); 1,000 (FR Y–6a)
Average Response Time: 8 hours (FR Y–6); 1 hour (FR Y–6a)
Significant effect on small businesses is not affected.
General Description of Report
These reports are required by law (12 U.S.C. 1844(c)). Certain portions may be given confidential treatment at respondent request (5 U.S.C. 552 b)(4) and (b)(8)).
The annual FR Y–6 report is the Federal Reserve System's principal source of independently audited financial data on bank holding companies, their subsidiaries and other regulated investments. It consists of financial statements and structure and ownership information in the company's own format. It is being renewed with a revision requiring a cash flow statement instead of the statement of changes in financial position, beginning December 1988. The FR Y–6a report provides information on any change in the structure of bank holding companies and their subsidiaries. It is being renewed with certain clarifications in wording and revisions to provide additional detail on the manner of divestitures by bank holding companies.

4. *Report Title:* Annual Report of Selected Financial Data of Nonbank Subsidiaries of Bank Holding Companies
Agency Form Number: FR –11i
OMB Docket Number: 7100–0218
Frequency: Annual
Reporters: Nonbank subsidiaries of bank holding companies
Annual Reporting Hours: 1,850
Estimated Number of Respondents: 3,083
Average Response Time: .5 hour
Significant effect on small businesses is not affected.
General Description of Report
This report is required by law (12 U.S.C. 1844(c)). Certain portions may be given confidential treatment at respondent request (5 U.S.C. 552 (b)(4), (b)(8)).
This report provides selected balance sheet and income information in a standardized format, and is being renewed with certain minor informational changes to be effective December 1988. It is the Federal Reserve System's only source of standardized information on individual nonbank subsidiaries and is used to monitor activities of these subsidiaries.

5. *Report Title:* Annual Daylight Overdraft Capital Report for U.S. Agencies and Branches of Foreign Banks
Agency Form Number: FR 2225
OMB Docket Number: 7100–0216
Frequency: Annual
Reporters: U.S. Agencies and Branches of Foreign Banks
Annual Reporting Hours: 110
Estimated Number of Respondents: 110
Average Hours per Response: 1
Small businesses are not affected.
General Description of Report
This information collection is considered voluntary (12 U.S.C. 248) and is given confidential treatment (5 U.S.C. 552(b)(4)).
The FR 2225 report provides timely data on the worldwide capital of the foreign parent, which is used in conjunction with other information to calculate the branches' daylight overdraft limit on large dollar payments systems. Minor revisions include a reduction in the frequency of the report to once a year (and a conforming amendment to the title of the report), elimination of one item, and clarifications.
Final approval under OMB delegated authority of the extension, with revision, of the following report:
Report Title: Report of Sender Net Debit Cap
Agency Form Number: FR 2226
OMB Docket Number: 7100–0217
Frequency: Annual
Reporters: Depository institutions
Annual Reporting Hours: 578
Estimated Number of Respondents: 5,780
Average Hours per Response: .1
Small businesses are not affected.
General Description of Report:
This information collection is considered voluntary (12 U.S.C. 248) and is given confidential treatment (5 U.S.C. 552(b)(4)).

The FR 2226 report provides timely data on institutions' debit cap levels which the Federal Reserve uses to monitor payments activities with the objective of reducing intraday credit exposure.

Board of Governors of the Federal Reserve System, November 3, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–25961 Filed 11–8–88; 8:45 am]

BILLING CODE 6210–10–M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Charles K. Breland et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 23, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Charles K. Breland,* Spanish Fort, Alabama; to acquire an additional 33.22 percent of the voting shares of FirstBanc Holding Company, Inc., Robertsdale, Alabama, and thereby indirectly acquire First Bank of Baldwin County, Robertsdale, Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dale DeVries,* Pearl City, Illinois; and Ronald Lawfer, Stockton, Illinois; to acquire 40 percent of the voting shares of Kent Bancshares, Inc., Kent, Illinois, and thereby indirectly acquire Kent Bank, Kent, Illinois.

2. *Shirley B. Hennebry,* La Grange, Illinois; to acquire 27.24 percent of the voting shares of 1st Brookfield, Inc., Western Springs, Illinois, and thereby indirectly acquire First National Bank of Brookfield, Brookfield, Illinois.

3. *Earl V. Slife and Edith C. Slife,* Hawarden, Iowa; Earl V. Slife, Jr., Hawarden, Iowa; Harry G. Slife, Cedar Falls, Iowa; and Alan J. Burke, Hawarden, Iowa; to acquire 40 percent of the voting shares of Hawarden Bancshares, Inc., Hawarden, Iowa, and thereby indirectly acquire Farmers State Bank, Hawarden, Iowa.

Board of Governors of the Federal Reserve System, November 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–25962 Filed 11–8–88; 8:45 am]

BILLING CODE 6210–01–M

Equimark Corp., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The compaines listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, descreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation,* Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Equimanagement, Inc., Pittsburgh, Pennsylvania, in arranging commercial real estate equity financing pursuant to § 225.25(b)(14); and foreign exchange advisory and transactional services pursuant to § 225.25(b)(17) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corportation,* Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Investment Corporation, Chicago, Illinois, in making and servicing mortgage loans pursuant to § 225.25(b)(l)(iii) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Part Financial Corporation,* St. Louis Park, Minnesota; to engage *de novo* through its subsidiary, Part Investment Company, St. Louis Part, Minnesota; in providing securities brokerage services and incidental activities with regard to Mutual Funds, Unit Investment Trusts, Municipal Revenue Bonds, Collateralized Mortgage Obligations, Leases, Securitized Credit Car Receivables, Securitized Automobile Receivables, Commercial Paper, Corporate Bonds, Title I Participation Certificates, Bankers Acceptances, and Certificates of Deposits pursuant to section 225.25(b)(15) of the Board's Regulation Y.

Applicant also proposes to directly engage *de nonvo* in the origination and servicing of loans or other extensions of credit pursuant to § 225.25(b)(1) (i), (iii), and (iv) of the Board's Regulation Y. These activities would include issuing letters of credit and accepting drafts for the company's account or for the account of others.

The securities activities will be conducted in the states of Minnesota and Florida. The lending activity will be conducted in the State of Minnesota.

Board of Governors of the Federal Reserve System, November 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–25963 Filed 11–8–88; 8:45 am]

BILLING CODE 6210–01–M

Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1988.

A. FEDERAL RESERVE BANK OF MINNEAPOLIS (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota, and two of its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to acquire certain assets and liabilities of HBE Leasing Corporation, St. Louis, Missouri, and thereby expand their current activities of leasing personal property or acting as agent, broker or advisor in leasing personal property pursuant to § 225.25(b)(5); and making, acquiring, or servicing loans or other extensions of credit such as would be made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y into the five remaining states of Arkansas, Maine, Michigan, New Hampshire, and Vermont and the District of Columbia thereby giving Applicants nationwide authority.

Board of Governors of the Federal Reserve System, November 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25964 Filed 11-8-88; 8:45am]

BILLING CODE 6210-01-M

Sovran Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 30, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation,* Norfolk, Virginia, and Sovran Financial Corporation/Central South, Nashville, Tennessee; to acquire 100 percent of the voting shares of First Bank of Marion County, South Pittsburg, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Friendship Bancorp,* Friendship, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Friendship State Bank, Friendship, Indiana.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *ANB Bankcorp, Inc.,* Bristow, Oklahoma; to acquire 100 percent of the voting shares of Citizens Bank, N.A., Sapulpa, Oklahoma. Comments regarding this application must be received by November 23, 1988.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *C.N. Bancorp, Limited,* Taipei, Taiwan, and Williams-Augusta Acquisition Corp, San Francisco, California; to become bank holding companies by acquiring 97 percent of the voting shares of California National Bank, San Francisco, California.

2. *Moore Financial Group, Incorporated,* Boise, Idaho; to acquire 100 percent of the voting shares of Community Bank of Renton, Renton, Washington.

Board of Governors of the Federal Reserve System, November 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25965 Filed 11-8-88; 8:45am]

BILLING CODE 6210-01-M

[Docket No. R-0650; BGFRS-22]

Privacy Act of 1974; Proposed New System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed New System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the Board is publishing for comment a proposed new system of records: BGFRS-22: FRB—Chain Banking Reference System. The proposed new system of records will enable the Federal Reserve System to monitor more effectively the ownership and structural arrangements of chain banking organizations. It will also enhance the System's ability to assure the safety and soundness of banks and other institutions under its supervision.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: Comments on the proposed new system of records should be addressed to William W. Wiles, Secretary of the Board, Constitution Avenue at 20th Street, NW., Washington, D.C. 20551. All material

should be in writing and should contain the docket number R–0650. All written documents will be available for public inspection from 8:45 a.m. to 5:15 p.m., at the Office of the Secretary, Public Information Office, Room B–1122, at the above address.

FOR FURTHER INFORMATION CONTACT: James I. Garner, Assistant Director, Division of Banking Supervision and Regulation (202) 452–2704; MaryEllen A. Brown, Assistant to the General Counsel, Legal Division (202) 452–3608. For the hearing impaired *only*: Telecommunication Devices for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: A Federal Reserve System Chain Banking Task Force was formed to evaluated existing Federal Reserve supervisory policies for chain organizations. The Task Force concluded that the System could more effectively and consistently supervise chain organizations nationwide through accessing up-to-date ownership and structural data. Therefore, in conjunction with the Task Force evaluation, the System is developing a new system of records—The Chain Banking Reference System—to provide ongoing structural information on chain organizations.

The "Chain Banking Reference System" would be categorized by the names of the principal(s) of each chain, and would include the percentage ownership and positions held in the institutions, names and reference numbers for the banks and bank holding companies in the chain, and the institutions' locations. For purposes of this system of records, "principal" means an individual who directly or indirectly, or acting through or in concert with one or more persons, controls a banking organization or owns, controls, or has the power to vote 25 percent or more of any class of voting securities of a banking organization. A chain banking organization exists where two or more separate banking organization are owned or controlled by a principal or group of principals acting together.

The recordkeeping system will contain nationwide data and will be used to track and monitor more effectively chain banking organizations and their compliance with Board guidelines, policies, and capital requirements. The proposed new system of records, therefore, will enhance the Federal Reserve System's supervisory responsibilities for banks and bank holding companies. Information used in the proposed recordkeeping system will be obtained form information in acquisition or merger applications of banks and bank holding companies, change of control notices, examination and inspection reports, and the Federal Reserve's F.R. Y–6 annual reports.

A report of this new system of records was filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget on November 7, 1988. This new system of records will become effective on January 9, 1988, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register.**

By order of the Board of Governors of the Federal Reserve System, November 3, 1988.

William W. Wiles,

Secretary of the Board.

BGFRS–22

SYSTEM NAME:

FRB-Chain Banking Reference System.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System Constitution Ave. at 20th St., NW. Washington, D.C. 20551

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals who directly or indirectly, or acting through or in a concert with one or more persons, control two or more banking organizations or own or have the power to vote 25 percent or more of the outstanding voting shares of two or more separate banking organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of the principal(s) of each chain, the percentage ownership each has, positions held by principal(s) in the institutions, the bank and bank holding company names and reference numbers, and the institutions' locations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 248(a)(1) *et seq.*; 12 U.S.C. 1811 *et seq.*; and 12 U.S.C. 1841 *et seq.*; which together authorize the Board to examine, supervise, and regulate all state chartered commercial banks that are members of the Federal Reserve System and all bank holding companies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By Board and Reserve Banks' staff to identify any individual who is a principal in two or more banks or bank holding companies; to ensure in the merger and application process that all elements of a chain banking organization are considered in assessing financial, managerial and competitive factors and capital adequacy; to apply Board supervisory guidelines and policies that are relevant to chain banking organizations; to analyze probelms within a chain organization in an effort to avoid similar problems at related banking institutions; to coordinate the scheduling of concurrent examinations and inspections of related banking institutions; and to ensure the identification of common practices among banking institutions.

b. To respond to Congressional inquiries, referrals of constituent questions and comments, and to official inquiries by the General Accounting Office.

c. To refer where there is an indication of a violation of law, whether civil, criminal or regulatory in nature, to the appropriate federal, state or local agency charged with the responsibility of investigating or prosecuting such violations or with enforcing or implementing a statute, rule, regulation or order issued pursuant thereto.

d. To respond to a court order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and word processing discs would be stored in locked metal cabinets; computerized records would be maintained in electronic data processing systems.

RETRIEVABILITY:

Computer output, file folders, and card files would be retrievable by indexes of data fields, including name of a subject individual, bank or bank holding company name or number, Federal Reserve Bank district location, and perhaps control form numbers.

SAEGUARDS:

Paper records and word processing discs would be stored in locked metal cabinets. Computer-stored information would be protected by appropriate coding and other security measures. Only a limited number of authorized Board and Reserve Banks' staff who have a legitimate need for the information will be able to gain access to these records.

RETENTION AND DISPOSAL:

Records would be maintained indefinitely.

SYSTEM MANAGER AND ADDRESS:

James I. Garner, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the

Federal System, Contitution Ave., at 20th St., NW., Washington, D.C. 20551, (202) 452–2704.

NOTIFICATION PROCEDURES:

A person requesting notice as to whether this system of records contains information pertaining to him or her should write to the Division of Banking Supervision and Regulation, at the address below, enclosing his or her full name, current address, and a notarized statement attesting to the individual's identity. Simultaneously with requesting notification of inclusion in the system of records, the individual may request record access as described in the following section on "Record Access Procedures".

James I. Garner, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Consitution Ave., at 20th St., NW., Washington, D.C. 20551, (202) 452–2704.

RECORD ACCESS PROCEDURES:

Individuals who, through notification procedures set out above, have established that the system of records contains information pertaining to them, may request access to these records by writing to the Division of Banking Supervision and Regulation at the address given above; and the Board will thereafter notify the individual as to the time and place for access to the records.

CONTESTING RECORD PROCEDURES:

Individuals who seek to contest or to correct records in this system of records should: Contact the Division of Banking Supervision and Regulation at the address given above; reasonably identify the records; specify the information sought to be contested or corrected, the rationale for such challenge or correction, and the information requested to be substituted.

RECORD SOURCE CATEGORIES:

The information would be generated substantially from existing sources, including acquisition, merger and other applications, change of control notices, examination and inspection reports, and the annual F.R. Y–6 reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–25847 Filed 11–8–88; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunications Privacy Advisory Committee; Meeting

Notice is hereby given that the General Services Administration's (GSA's) Federal Telecommunications Privacy Advisory Committee will meet on November 3, 1988, from 8:30 a.m. to 4:00 p.m. at the American Institute of Architects, Conference Room 1, 1735 New York Avenue NW., Washington, DC. The agenda will include presentations and discussions of the following: Telephone systems operations, Privacy Act, and GSA regulations on listening in to telephone conversations.

The meeting will be open to the public.

Fewer than fifteen days' notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this meeting should be directed to John J. Landers, (202) 523–4968.

Dated: October 26, 1988.

John J. Landers,

Director, Office of Administration, Information Resources Management Service.

[FR Doc. 88–25884 Filed 11–8–88; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising a notice describing a system of records administered by the Office of Information Resources Management in the Office of the Secretary. On August 17, 1988, a new system of records notice describing telephone call detail records was published in the **Federal Register** for public comment (53 FR 31105). One comment on the proposal was received from the Office of Management and Budget (OMB).

OMB took exception to one of the routine use disclosures included in the notice. The disclosure at issue, routine use (7) in the notice published on August 17, 1988, provides for disclosures to the auditors, investigators, and other authorized employees of the Department's Office of Inspector General. OMB has indicated that the routine use is unnecessary considering the provisions of Section (b)(1) of the Privacy Act (5 U.S.C. 552a(b)(1)), and has recommended the elimination of the disclosure. We have adopted OMB's recommendation by deleting routine use (7) from the notice, and the remaining routine uses have been renumbered accordingly. Also, other minor editing corrections have been made throughout the notice which is republished in its entirety below.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective November 9, 1988. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: November 1, 1988.

INTERIOR/OS–36

SYSTEM NAME:

Telephone Call Detail Records—Interior, Office of the Secretary–36.

SYSTEM LOCATION:

U.S. Department of the Interior (DOI) and bureau offices nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally Department, bureau/office, and contractor employees) who make long distance calls and individuals who received telephone calls placed from or charged to DOI telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of DOI telephone systems to place long distance calls; records indicating assignment of telephone numbers of employees; and records relating to the location of telephones. Telephone calls made to the Department's Office of Inspector General Hotline number are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., Appendix 3, Section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1348(b), which prohibits agencies from using appropriated funds to pay for personal calls; 44 U.S.C. 3101, which authorizes agencies to create and preserve records documenting agency organizations, functions, procedures and transactions; and 41 CFR 201–38.007, which limits the use of Government

telephone systems to the conduct of official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and data may be disclosed as is necessary, (1) to Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed in relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) in the event that material in the system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (6) to employees of the Department to determine responsibility for telephone calls and to resolve any disputes and facilitate the verification of discrepancies relating to billing, payment, or reconciliation of telephone operational or accountability records; (7) to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter; (8) to a telecommunications company providing telecommunications support to permit servicing the account.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12); Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701[a][3]).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Reord data on computer processing media or paper files.

RETRIEVABILITY:

Records are retrived by employee name, telephone number, identification number, or by an account code.

SAFEGUARDS:

Access to the records is limited to Government employees who have an official need to use the records in the performance of their duties. Records are stored in a controlled area and maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and paper records. Automated records are protected from unauthorized access through password identification procedures and other system based protection methods.

RETENTION AND DISPOSAL:

Pending approval of the Archivist of the U.S.

SYSTEM MANAGERS AND ADDRESS:

(1) Fish and Wildlife Services, Chief, Division of Information Resources Management, Room 801, 1730 K Street NW., Washington, DC 20240 (202) 653–7464.

(2) U.S. Geological Survey, Chief, Branch of Telecommunications Services, 12201 Sunrise Valley Dr., Mail Stop 809, Reston, VA 22092 (703) 648–7006.

(3) Bureau of Indian Affairs, Telecommunications Manager, Office of Facilities Management, P.O. Box 1248, Albuquerque, NM 87103 (505) 766–2846.

(4) Minerals Management Service, Chief, Safety and Facilities Management Branch, Mail Stop 635, 1110 Herndon Parkway Building, Herndon, VA 22070 (703) 435–6220.

(5) Bureau of Mines, Telecommunications Manager, 5th Floor, 2401 E Street, Washington, DC 20240 (202) 634–1032.

(6) Bureau of Reclamation, Telecommunications Manager, Denver Federal Center, Code D7900, P.O. Box 25007, Denver, Colorado 80225 (303) 236–0970.

(7) Office of the Secretary, Office of Administrative Services, Chief, Branch of Telecommunications Management, Room 1449, 18th & C Streets, NW. Washington, DC 20240 (202) 343–1412.

(8) Office of Surface Mining Reclamation & Enforcement, Telecommunications Manager, Room 5131, 1100 L Street, Washington, DC 20240 (202) 343–5447.

(9) National Park Service, Chief, Telecommunications Engineering, P.O. Box 25287, Denver, CO 80225 (303) 969–2084.

(10) Bureau of Land Management, Chief, Branch of Telecommunications, Mail Stop 208 Prmr, 18th & C Street, NW. Washington, DC 20240 (202) 653–8853.

(11) Office of Inspector General Administration, 18th & C Street, NW., Room 5346, Washington, DC 20240 (202) 343–4356.

NOTIFICATION PROCEDURE:

Requests for notification regarding the existence of call detail report information should be addressed to the appropriate system manager. A written and signed request stating that the request stating that the requester seeks information concerning call records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Requests for access to call detail information should be address to the appropriate system manager. All requests must be in writing and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the appropriate systems manager, and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–25973 Filed 11–8–88; 8:45 am]
BILLING CODE 4310–RH–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be

obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Bird Banding Recovery Report.
OMB Approval No.: 1018–0005
Abstracts: This form is used by bird banders and professional wildlife agency personnel to record and report scientific bird band recovery information on the recovery of Service bands and markers used on marked birds that were shot, found dead or injured. The data collected is used by Federal, Provincial and State personnel and scientific cooperators to study population size, mortality and survival rates, longevity and migration pattern of birds. Such data is also one of the most important tools used in the preparation of the annual U.S. and Canadian hunting and shooting regulations.
Service Form number: 3–1807
Frequency: On occasion
Description of Respondents: Individuals or households, Federal agencies or employees, and State, or local governments
Estimated Completion Time: The reporting burden is estimated to be three minutes per response.
Annual Responses: 50,000
Annual Burden Hours: 2,500
Service Clearance Officer: James E. Pinkerton, 202–653–7500, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240

Date: October 19, 1988.

Marvin L. Plenert,

Assistance Director, Refuges and Wildlife.

[FR Doc. 88–25878 Filed 11–8–88; 8:45 am]

BILLING CODE 4310–55–M

Supplemental Environmental Impact Statement on the Wilderness Proposal for the Kenai National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued a Record of Decision (Decision) on the Supplemental Environmental Impact Statement (Statement) for the Wilderness Proposal in the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Kenai National Wildlife Refuge (Refuge), Alaska, pursuant to Section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Statement will be implemented immediately with the Wilderness Proposal being sent to the Secretary of the Interior for review and forwarding to the President.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

Copies of the Decision will be sent to all persons and organizations on the Kenai Refuge mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative C, the Proposed Action, for implementation. As a result, the Service is recommending that an additional 195,500 acres of the Refuge be added to the National Wilderness Preservation System.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88–25974 Filed 11–8–88; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Application for Marine Mammal Permit

The public is invited to comment on the following application for permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant

Name: John G. Shedd Aquarium, File no. PRT–730801, 1200 South Lakershore Drive, Chicago, IL 60605
Type of Permit: Public Display
Name of Animals: Alaskan sea otter (**Enhydra lutris lutris**); 6
Summary of Activity to be Authorized: The applicant proposes to Take these animals in Spring 1990 and transport them to permittee's facilities in Chicago, Illinois, for public display.
Source of Marine Mammals for Public Display: Prince William Sound, Alaska
Period of Activity: Spring 1990 until capture is completed.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for the review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application(s) are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1374 "K" Street, NW., Washington, DC.

Dated October 27, 1988.

R.K. Robinson,

Chief, Branch of Permits Office of Management Authority.

[FR Doc. 88–25909 Filed 11–8–88; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permits for Endangered and Threatened Species

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Jane N. Fleetwood, PRT–732769, Athens, GA

The applicant requests a permit to import up to 30 preserved hawksbill sea turtle (*Eretmochelys imbricata*) hatchlings and up to 30 preserved loggerhead sea turtle (*Caretta caretta*) hatchlings from Dr. Nicholas Mrosovsky, University of Toronto, Canada, for research purposes. The research will be carried out at the University of Georgia, College of Veterinary Medicine, Department of Anatomy.

Applicant: Exotic Paws, Inc., PRT–732760, Newport Beach, CA

The applicant requests a permit to export and reimport one captive born female leopard (*Panthera pardus*) for the purpose of display in a manner designed to educate the public with regard to the leopard's ecological role and conservation needs.

Applicant: Botanicals Inc., PRT–732482, Wayland, MA

The applicant requests a permit to sell, in interstate commerce, artifically propagated plants of the following

species: the Cumberland sandwort (*Arenaria cumberlandensis*), the Tennessee purple coneflower (*Echinacea tennesseensis*), the Maguire daisy (*Erigeron maguirei* var. *maguirei*) and the Contra Costa wildflower (*Erysimum capitatum* var. *angustatum*) for the purpose of enhancement of survival of the species.

Applicant: Gary Thomas, PRT–732664, Williston, FL

The applicant requests a permit to purchase in interstate commerce and then export and re-import one male Asian elephant (*Elephas maximus*) previously imported from the wild. This elephant is to be exported and re-imported for the purpose of conservation education. In the future, the applicant will export and re-import this animal for the same purpose.

Applicant: Cheyenne Mountain Zoological Park, PRT–732772, Colorado Springs, CO

The applicant requests a permit to export one pair of captive-born jaguars (*Panthera onca)* to the Jakarta Zoo, Jakarta, Indonesia, for captive breeding purposes. The jaguars are among six animals that are to be exported to the Jakarta Zoo in trade for two pairs of Sumatran tigers (*Panthera tigris sumatrae*).

Applicant: Tiger Spots, PRT–732660, Las Vegas, NV

The applicant requests a permit to export and re-import two captive-born male bengal tigers (*Panthera tigris*) for the purpose of conservation education. In the future, the applicant will export and re-import these animals for the same purpose.

Applicant: Bruce A. Haak, PRT–732775, Eagle, ID

The applicant requests a permit to import one captive-hatched female Eurasian peregrine falcon (*Falco peregrinus peregrinus*) from Mr. Darryl D. Barnes, Suffolk, England, for the purpose of captive breeding.

Applicant: Barney Lewis, PRT–730094, Meridian, ID

The applicant requests a permit to import one pair of captive-hatched mikado pheasants (*Syrmaticus mikado*) and two pairs of captive-hatched white-eared pheasants (*Crossoptilon crossoptilon*) from H.J. Hardy, South View Aviaries, Burnaby, Canada, for enhancement of propagation.

Applicant: William Van Harlow, Jr., PRT–732802, Amarillo, TX

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. Michael J. D'Alton, Bredasdorp, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Mr. Dallas J. Fontenot, PRT–732797, Houston, Texas

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: November 3, 1988.

Susan Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–25910 Filed 11–8–88; 8:45 am]

BILLING CODE 4310–M

Bureau of Land Management

[UT–050–09–4212–11; U–58554]

Realty Action; Millard County, UT

AGENCY: Bureau of Land Management, Richfield, Utah.

ACTION: Classification of Public Lands in Millard County, Utah, for Lease or Sale for Recreation and Public Purposes (R&PP), U–58554.

SUMMARY: The surface estate of the following described public lands has been examined and determined to be suitable for classification for lease with an option to purchase under the authority of the R&PP Act of 1926 as amended (43 U.S.C. 869, et seq.):

Salt Lake Meridian, Utah

T. 16 S., R. 6 W.
Section 26, NE¼NW¼, W½NW¼NE¼.
Containing 60 acres.

The lease with option to purchase would be offered to the City of Delta, to be developed for a gun range for public use. Five years after issuance of the lease and upon successful development of the gun range, the lands would be available for purchase by the City of Delta. The lease shall contain terms and conditions to protect the lands from adverse impacts and a provision requiring adherence to an approved Plan of Development. Posting of a performance bond by the City of Delta to insure compliance to the terms of the lease will be required. The lands described in this Notice meet the criteria for classification set forth in 43 CFR 2410.1 and 2430.4. These lands are not required for any Federal purpose. The lease/purchase is consistent with the Bureau's planning for this area and would be in the public interest. These lands will not be offered for lease or sale until classification becomes effective.

The lease and/or patent, if issued, would be subject to the provisions of the R&PP Act to all applicable regulations of the Secretary of the Interior, and the patent would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of Interior may prescribe.

The patent would also be subject to:

1. Those rights for highway purposes which have been granted to the Utah Department of Transportation under right-of-way grant SL–062152.

2. Right-of-way U–59239 granted to the Williams Telecommunications Company for a fiber optics cable.

3. All other valid existing rights of record at the time of patent issuance.

Upon publication of this Notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws and the material disposal laws, except for recreation and public purposes and leasing under the mineral leasing laws.

ADDRESS: Detailed information concerning the lease, including the environmental assessment report, is available for review at the House Range Resource Area Office, P.O. Box 778, Fillmore, Utah 84631, telephone No. (801) 743–6811. Comments on the proposal should be sent to this address.

DATE: Interested parties may submit comments on or before December 27, 1988.

Any objections received during the comment period will be reviewed by the State Director. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. The classification of the lands described in this Notice will become effective 60

days from the date of publication in the Federal Register.

Date: November 1, 1988.

Jerry Goodman,

District Manager.

[FR Doc. 88-25882 Filed 11-8-88; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-030-09-4332-09]

Availability of Draft Wilderness Environmental Impact Statement and Notice of Public Meeting; Wyoming

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of Draft Wilderness Environmental Impact Statement for the Whiskey Mountain and Dubois Badlands Wilderness Study Areas (WSAs), Rawlins District, Wyoming.

SUMMARY: This Draft Environmental Impact Statement (DEIS) assesses the environmental consequences of managing the Whiskey Mountain WSA and the Dubois Badlands WSA as wilderness or nonwilderness.

DATES: Public comments on the Draft EIS will be accepted for 90 days after publication of this notice in the Federal Register. Two public meetings will be held to solicit additional public comments. The meetings will be held at the Town Hall in Dubois, Wyoming, on Wednesday, December 14, 1988, starting at 7:00 p.m., and at the Fremont County School District Administration Building in Riverton, Wyoming, Thursday, December 15, 1988 also starting at 7:00 p.m.

ADDRESSES: Individual copies of the EIS may be obtained by by writing to Team Leader, Whiskey Mountain-Dubois Badlands EIS, Rawlins District Office, PO Box 670, Rawlins, WY 82301. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240

Bureau of Land Management, Lander Resource Area Office, 125 Sunflower Street, Lander, WY 82520

Bureau of Land Management, Wyoming State Office, 2515 Warren Ave., Cheyenne, WY 82003

FOR FURTHER INFORMATION CONTACT: Bob Janssen, EIS Team Leader, Rawlins District Office, P.O. Box 670, 1300 North 3rd Street, Rawlins, WY 82301, phone: (307) 324-7171.

SUPPLEMENTARY INFORMATION: This EIS is a supplement to the Lander Resource Area Final Resource Management Plan, published in June 1987. The EIS was not completed in time for the recommendations to be included in the final RMP, so this supplement was prepared. The alternatives assessed in the DEIS for both WSAs include: (1) a "no wilderness" alternative; and (2) an "all wilderness" alternative. The total acreage and the propose action for each of the WSAs analyzed in the EIS are as follows:

Area	Suitable	Non-suitable
Whiskey Mountain WSA.	0 acres.....	487 acres
Dubois Badlands WSA.	0 acres.....	4,580 acres

These two WSAs are being studies under the authority of Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA). Once public comment has been received and analyzed, a final EIS will be prepared which will incorporate those public comment germane to the anaylsis of environmental impacts regarding designation or nondesignation of these two WSAs as wilderness. For Section 202 WSAs that are recommended nonsuitable for wilderness designation, the State Director has the authority to release those public lands from wilderness study and return them to uses other than wilderness in accordance with existing land use plans. A Record of Decisions will be prepared for these WSAs for the State Director's approval. Management based on existing land use plans may begin 30 days after the State Director files the final EIS with the Environmental Protection Agency.

For Section 202 WASs that are recommended suitable for wilderness designation, a legislative final EIS will be prepared and forwarded to the President through the Secretary of the Interior. The President will then make a recommendation to Congress. Only Congress can designate an area as wilderness.

David J. Walter,

Acting State Director.

[FR Doc. 88-25905 Filed 11-8-88; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Concession Contract Negotiations; Elk Creek Marina, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposed to negotiate a concession contract with Elk Creek Marina, Inc., authorizing it to continue to provide marina, boating, food service, and marina related facilities and services for the public at Curecanti National Recreation Area, Colorado for a period of five (5) years from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: January 9, 1988.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1988, and therefore, pursuant to the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Jack Neckels,

Regional Director, Rocky Mountain Region.

Acting Date: February 12, 1988.

[FR Doc. 88-25926 Filed 11-8-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523.

Date Submitted: October 28, 1988
Submitting Agency: Agency for International Development
OMB Number: 0412–0520
Type of Submission: Renewal
Title: Information Collection Elements in the A.I.D. Acquisition Regulations (AIDAR)–A.I.D. Procedures for Protest
Purpose: A.I.D. is authorized to make contracts with any corporation, international organization, or other body of persons whether within or without the United States in furtherance of the purposes and within the limitations of the Foreign Assistance Act (FAA). Information collections and recordkeeping requirements placed on the public by the A.I.D. Acquisition Regulation (AIDAR), are published as 48 CFR Part 7. These are all A.I.D. unique procurement requirements which have not otherwise been submitted to OMB for approval. The preaward requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information during the post-award period are based on the need to administer public funds prudently. Respondents will have a submission burden of three responses and an estimated annual recordkeeping burden of 12 hours per recordkeeper.
Reviewer: Francine Picoult (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: October 28, 1988.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 88–25972 Filed 11–8–88; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–284]

Certain Electric Power Tools, Battery Cartridges and Battery Chargers; Change of Investigative Attorney

Notice is hereby given that, as of this date, in addition to George C. Summerfield, Esq., Gary Hnath, Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-captioned investigation.

The Secretary is requested to publish this Notice in the **Federal Register.**

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436.

Date: November 4, 1988.

[FR Doc. 88–25941 Filed 11–8–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories and Products Containing Such Memories; Decision to Review and Modify an Initial Determination Amending the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined (1) to review on its own motion an initial determination (ID) (Order No. 137) issued by the presiding administrative law judge (ALJ) amending the notice of investigation in the above-captioned investigation, (2) to modify the ID to correct the omission of the specific patent claims in controversy from the amended notice of investigation, and (3) to deny respondents' petition to review the ID on other grounds.

ADDRESS: Copies of the ID and all other non-confidential documents filed in correction with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1097. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments made to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418, 102 Stat. 1107) (the OTCA). The notice of investigation was also amended to reflect the fact that complainant Intel Corporation has withdrawn its allegations of infringement of U.S. Letters Patent 4,519,849. However, the claims of the patents remaining in controversy were omitted from the scope of the investigation as set forth in the ID. The Commission on its own motion reviewed and modified the ID to correct that omission.

Respondents Hyundai Electronics Industries Co., Ltd. and Atmel Corporation petitioned for review of the ID, arguing that the OTCA does not apply to section 337 investigations instituted prior to the effective date (August 23, 1988) of the OTCA amendments to section 337. Intel and the IAs both filed responses in opposition to respondents' petition for review.

By order the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 2, 1988.

[FR Doc. 88–25942 Filed 11–8–88; 8:45 am]

BILLING CODE 7020–02–M

[332–264]

U.S. Imports of Lamb Meat

AGENCY: United States International Trade Commission.

ACTION: Institution of Investigation.

EFFECTIVE DATE: October 20, 1988.

SUMMARY: As required by section 1937 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. Law 100–418, 102 Stat. 110, approved Aug. 23, 1988), the Commission has instituted investigation No. 332–264 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of monitoring

and investigating for two years U.S. imports of fresh, chilled, or frozen lamb meat. The Commission will issue reports after the first and second year of monitoring.

FOR FURTHER INFORMATION CONTACT: David E. Ludwick; Agriculture, Fisheries, and Forest Products Division; U.S. International Trade Commission; Washington, DC, 20436; Telephone (202) 252–1329.

Background and Scope of Investigation

In the course of this investigation, the Commission will monitor and investigate U.S. imports of fresh, chilled, or frozen lamb meat and the primary components of the U.S. market for the product. The Commission will gather data and information, to the extent possible, on U.S. producing facilities in such areas as sales, market share, employment levels, inventories, profit levels, and capital generation, and will examine U.S. imports in relation to levels of domestic production and to imports by other major consuming countries. The Commission will also analyze the relative strengths and weakenesses of U.S. imports and the domestic product in the U.S. market.

Written Submissions

Interested persons are invited to submit written statements at any time during the investigation but no later than May 1, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirement of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 3, 1988.

[FR Doc. 88–25943 Filed 11–8–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–281]

Certain Recombinant Erythropoietin; Commission Decision Not To Review an Initial Determination Designating the Investigation More Complicated

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 24) issued by the presiding administrative law judge (ALJ) designating the above-captioned investigation "more complicated" and extending the administrative deadline for issuance of the final ID by two months, *i.e.*, from November 10, 1988, to January 10, 1989. The Commission has also extended the deadline for completion of the investigation by two months, *i.e.*, from February 10, 1989, to April 10, 1989.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1104.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On October 12, 1988, the presiding ALJ issued an ID designating the subject investigation "more complicated" because of the complexity of the technology underlying the investigation and because of the complex legal issues involved. No petitions for review of the ID or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.59(a) of the Commission's Interim Rules of Practice and Procedure (53 FR 33307, Aug. 29, 1988.).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 2, 1988.

[FR Doc. 88–25944 Filed 11–8–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–282]

Certain Venetian Blind Components; Decision Not To Review an Initial Determination Amending the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 10) issued by the presiding administrative law judge (ALJ) amending the notice of investigation in the above captioned investigation.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, Telephone 202–252–1105.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 stat. 1107). The notice of investigation was amended to delete the reference to the former requirement that an industry in the United States be efficiently and economically operated and to delete the reference to the former requirement that complainant be required to prove that the effect or tendency of the alleged unfair act of patent infringement or registered trademark infringement is to destroy or substantially injure an industry in the United States. No petitions for review or agency comments regarding the ID were received.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19

U.S.C. 1337) and interim rule § 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Issued: November 3, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-25945 Filed 11-8-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Volume No. OP3MCF-548 (A)]

Motor Carrier Applications to Consolidate, Merge, or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Application(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notification of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

Noreta R. McGee,

Secretary.

MC-F-19281, filed October 21, 1988. Arrow Stage Lines, Inc. (Arrow) (720 East Norfolk Ave., Norfolk, NE., 68701)—Control—Neoteric, Inc., d/b/a Chief Bus Service (Neoteric) (206 E. Grant, Papillon, NE., 68701). Representative: Doyle Busskohl, 720 East Norfolk Ave., Norfolk, NE., 68701). Arrow (MC-29592), a motor common carrier of passengers in interstate commerce, in charter operations, between points in the United States (except Hawaii), to control Neoteric (MC-165375), a motor common carrier of passengers, in interstate commerce, in special and charter operations, between points in the United States (except Hawaii), through purchase of 52 percent of stock. Approval of purchase is pursuant to 49 U.S.C. 11341(a). Arrow is owned and controlled by Charles D. Busskohl (50 percent) and Doyle Busskohl (50 percent), who also own and control to the same extent Black Hills State Lines, Inc., (MC-123773), a motor common carrier of passengers, in interstate commerce, over regular routes between Omaha, NE and Rapid City, SD, and between Omaha, NE. and Denver, CO.

[FR Doc. 88-25853 Filed 11-8-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-267)]

CSX Transportation, Inc.; Abandonment of Rail Line of St. Mark's Branch at Tallahassee, FL

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 3.51-mile rail line between milepost 799.79 and milepost 803.30 in Tallahassee, Leon County, FL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: November 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25967 Filed 11-8-88; 8:45am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 273X)]

CSX Transportation, Inc., Abandonment Exemption; in Baltimore, MD

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.314 miles of track between East Fort Avenue and Conway Street in Baltimore, MD. The track, which is located in the beds of Baltimore's public streets, is owned by the city.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 9, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1], must be filed by November 21, 1988. Petitions to stay regarding matters that do not involve environmental issues,[2]

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-438446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 29,1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.

Charles M. Rosenberger and Patricia Vail, 500 Water Street, Jacksonville, FL 32202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 14, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 1, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25745 Filed 11–8–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Two Partial Consent Decrees Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 31, 1988, two proposed partial consent degrees in *United States v. W.R. Grace & Co. Conn. and American Environmental Services, Inc.,* Civil Action No. 88–2412–K, were lodged with the United States District Court for the District of Massachusetts. The decrees resolve claims of the United States against the defendants for violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart M, promulgated pursuant to the Clean Air Act, 42 U.S.C. 7401, et seq. The violations occurred in the course of removal of asbestos by American Environmental Services, Inc. ("AES") at a facility owned by W.R. Grace & Co. Conn. ("W.R. Grace") in Acton, Massachusetts.

In the first of the two proposed consent decrees, referred to herein as the W.R. Grace decree, W.R. Grace agrees to pay the United States a civil penalty in the amount of $50,000. In addition, W.R. Grace agrees to implement specified procedures to ensure future compliance with the asbestos NESHAP at all facilities within its Polyfibron Division, of which the facility in Acton, Massachusetts, is a part. In the second of the two proposed consent decrees, AES agrees to pay the United States a civil penalty in the amount of $40,000 in two installments: $10,000 upon entry of the consent decree and $30,000 on or before June 1, 1989. In addition, AES agrees to implement specified procedures to ensure future compliance with the asbestos NESHAP in all asbestos operations undertaken by AES.

The proposed decrees may be examined at the office of the United States Attorney for the District of Massachusetts, 1107 J.W. McCormack Federal Office Building, U.S. Post Office and Courthouse, Boston, Massachusetts 02109; at the Region I Office of Regional Counsel, Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203, contact: Ann Johnston, Esq.; and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of $1.10 for the W.R. Grace decree or in the amount of $1.20 for the AES Decree (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed consent decrees for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v . W.R. Grace & Co. Conn. and American Environmental Services, Inc., Civil Action No. 88–2412–K (D. Mass.), D.J. reference No. 90–5–2–1–1219.

Richard J. Leon,

Deputy Assistant Attorney General.

[FR Doc. 88–25975 Filed 11–8–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmetal Response, Compensation and Liability Act (CERCLA), notice is hereby given that on October 14, 1988, a proposed consent decree in *United States* v. *Zinc Corporation of America, a Division of Horsehead Industries, Inc.*, Civil Action No. 88–1688 was lodged with the United States District Court for the Middle District of Pennsylvania.

The proposed consent decree requires the defendant to implement the remedial action selected by the Environmental Protection Agency (EPA) to address the imminent and substantial endangerment to human health and the environment posed by the release or threat of release of hazardous substances at Blue Mountain, Operable Unit I of the Palmerton Zinc Site in the vicinity of the Borough of Palmerton, Carbon County, Pennsylvania. The remedy to be conducted by the defendant includes using a mixture of flyash and wastewater treatment sludge to revegetate a portion of Blue Mountain. The decree also requires the defendant to reimburse the United States for past response costs incurred at the site and to pay a percentage of EPA's oversight costs for the remedy. The parties to the consent decree are the United States and Zinc Corporation of America.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Zinc Corporation of America,* DJ Ref. 90–11–2–271.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, Suite 309, Federal Building, Washington & Linden Streets, Scranton, Pennsylvania 18501 and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in

person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $5.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 88-25976 Filed 11-8-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-88-13-M]

Antelope Valley Aggregate, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Antelope Valley Aggregate, Inc., 7311 East Avenue T, Littlerock, California 93543 has filed a petition to modify the application of 30 CFR 56.9007 (unguarded conveyors with walkways) to its Antelope Valley Aggregate, Inc., Mine (I.D. No. 04-01690) located in Los Angeles County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that unguarded conveyors with walkways be equipped with emergency stop devices or cords along their full length.

2. As an alternate method, petitioner proposes to operate a conveyor that is 30 inches or more in height without the use of guards or stop cords.

3. In support of this request, petitioner states that—

(a) The conveyor would be operating in an open area with limited access; and

(b) There are no minimum height standards for the installation of guards or stop cords.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627,, 4015 Wilson Boulevard, Arlington, Virgina 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Dated: November 3, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-25949 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-14-M]

Antelope Valley Aggregate, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Antelope Valley Aggregate, Inc., 7311 East Avenue T, Littlerock, California 93543 has filed a petition to modify the application of 30 CFR 56.14001 (moving machine parts) to its Antelope Valley Aggregate, Inc. Mine (I.D. No. 04-01690) located in Los Angeles County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that takeup pulleys and similar exposed moving machinery parts which may be contacted by persons, and which may cause injury to persons be guarded.

2. As an alternate method, petitioner proposes to install a remote lubrication area and seal off the area in which the pulleys are located in lieu of guards.

3. In support of this request, petitioner states that—

(a) A barrier would be placed around the lubrication area; and

(b) The area would be properly posted to exclude entry when the machinery is operative.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

Date: November 3, 1988.

[FR Doc. 88-25950 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-197-C]

Bare Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bare Mining, Inc., Route 3, Box 84, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 4 (I.D. No. 15-16461) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the mining height is less than 42 inches and the installation of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies:

(a) Shear off roof bolts;

(b) Damage or cut trailing cables;

(c) Interrupt ventilation due to line and check curtains being torn down; and

(d) Limit the visibility for equipment operators.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88-25951 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-201-C]

Jen Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Jen Coal Company, Route 5, Box 357-A, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16415) located in Knox County, Kentucky. The petition is

filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88–25952 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–194–C]

Reedy Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Reedy Coal Company, Inc., P.O. Box 339, Isom, Kentucky 41824 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 3 (I.D. No. 15–16377) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the mining height is less than 42 inches and the installation of cabs or canopies on the mine's electric face equipment would result in a diminution of safety because the cabs or canopies:

(a) Shear off roof bolts;

(b) Damage or cut trailing cables;

(c) Disrupt ventilation due to line and check curtains being torn down; and

(d) Limit the visibility for equipment operators.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: November 3, 1988.

[FR Doc. 88–25953 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–202–C]

Roark Contracting, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Roark Contracting, Inc., P.O. Box 27, Trosper, Kentucky 40995 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15–16354) located in Knox Country, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuosly after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately.

Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

(4) Petitioner states that the proposed alternate method wil provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 2, 1988.

[FR Doc. 88-25954 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-200-C]

Steel Hollow Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Steel Hollow Mining, Inc., P.O. Box 527, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 3 Mine (I.D. No. 15-16444) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 2, 1988.

[FR Doc. 88-25955 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-198-C]

Tara K Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tara K Coal Company, Inc., P.O. Box 558, Norton, Virginia 24273, has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-06425) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine ranges from 45 to 53 inches in height and the bottom is extremely soft and uneven with ups and downs throughout the mine.

3. Petitioner states that the installation of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies:

(a) Shear off roof bolts;

(b) Tear down check or line curtains thereby disrupting ventilation; and

(c) Create inadequate visibility and cramped conditions for the operator.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88-25956 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-189-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Company, Inc., 600 Grant Street, Room 1580, Pittsburgh, Pennsylvania 15230, has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Maple Creek Mine (I.D. No. 36-00970) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to roof deterioration and numerous massive roof falls, the entire length of certain return aircourses cannot be safely traveled.

3. As an alternate method, petitioner proposes that—

(a) A certified person would examine the return aircourses daily by taking air and methane readings at each measuring station, and the readings would be recorded in a book;

(b) A date board would be maintained at each measuring station. A certified person would take the air and methane readings and place his/her initials, date, and time of the readings on the date board;

(c) A diagram indicating the direction of airflow in the vicinity of each measuring station would be posted at that measuring station;

(d) The vicinity of each measuring station and access thereto would be maintained in a safe and travelable condition;

(e) Signs would be posted along the track haulage roads designating the location of each monitoring station;

(f) Methane would not be allowed to accumulate in the return aircourses in excess of legal limits, and if a marked variation in air quality is recorded, as determined by readings taken at each monitoring station, immediate action would be taken to determine the cause and appropriate corrective action taken where necessary;

(g) The return aircourses would at no time be utilized as primary return aircourses for the ventilation provided to the working sections of the mine through which miners are required to travel; and

(h) Persons working in the area for the purpose of providing safe access to and from the measuring stations would be limited to a maximum of four at any given time. Each person working in the affected area would be required to wear or carry a self-rescue device at all times. Each person working in the affected area would be able to reach a separate split of air within a reasonable period of time.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 2, 1988.

[FR Doc. 88-25957 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-195-C]

VP-5 Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

VP-5 Mining Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its VP-5 Mine (I.D. No. 44-03795) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the return aircourse be examined in its entirety on a weekly basis.

2. Petitioner states that due to roof deterioration and falls certain areas of the return entry cannot be safely traveled.

3. As an alternate method, petitioner proposes that—

(a) Evalualtion points would be established at Spad Nos. 4915 and 5071. Each production day a certified person would take air quality and quantity readings at the evaluation points. The date and time of the examinations and the certified person's initials would be recorded in a book or on a date board provided at the evaluation points;

(b) Weekly examinations for hazardous conditions would be conducted from Spad 4915 outby to the point where the return split meets another split of air and from Spad 5071 inby to the working section; and

(c) The results of the daily and weekly examinations would be recorded in a book on the surface. This book would be accessible to all interested parties.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88-25958 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide on its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 8.12, "Criticality Accident Alarm Systems," describes a system acceptable to the NRC staff for meeting the Commission's requirements for a criticality accident alarm system. The guide endorses, with some limitations, ANSI/ANS-8.3-1986, "Criticality Accident Alarm System."

Comments and suggestions in connection with (1) items for inclusion in guides currently beign developed or

(2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price.

Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88–25900 Filed 11–8–88; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Placement Service.

(2) *Form(s) submitted:* ES–1a, ES–2, ES–20a, ES–20b, ES–20c, ES–21, ES–21c, ES–22 and UI–35.

(3) *OMB Number:* 3220–0057.

(4) *Expiration date of current OMB clearance:* 12–31–88.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Total annual responses:* 70,100.

(9) *Estimated annual number of respondents:* 62,200.

(10) *Average time per response:* 4.088 minutes.

(11) *Total annual reporting hours:* 4,776.

(12) *Collection description:* Under the RUIA, the Board provides job placement assistance for unemployed railroad workers. The collection obtains information from job applicants, unemployment claims agents, railroad and non-railroad employers, and State Employment Service Offices for use in placement, for providing referrals for job openings and reports of referral results and for verifying and monitoring claimant eligibility.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–25860 Filed 11–8–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Revision

Form N–1A
File No. 270–21

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to Form N–1A under the Investment Company Act of 1940 and the Securities Act of 1933. Form N–1A is the registration statement for use by open-end management investment companies, except small business investment companies and insurance company separate accounts. There are approximately 2,470 registrants using Form N–1A, with an estimated compliance time of 1,055 hours per registrant. The additional time necessary for each registrant to comply with the Form's requirements, if the proposed amendments are adopted, would be negligible.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

November 2, 1988.

[FR Doc. 88–25866 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26243; File No. SR-Amex–88–10, Amendment No. 2]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Equity Index Participations.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is amending its proposed rules relating to Equity Index Participations ("EIPs") to permit holders

to receive physical delivery of shares of the component stocks of the S&P 500 Index or Amex Major Market Index upon exercise of a specified minimum of EIPs. The cash settlement alternative would continue to be permitted, as originally proposed.

The Exchange is further amending its filing to modify proposed Rule 900F regarding the applicability of certain options rules to EIPs trading; to amend proposed EIPs margin requirements under Rule 462(d); and to make other conforming and technical changes to the rules as originally proposed.

The proposed amendments are as follows ([brackets] indicate deletions; italics indicates new language):

Section 14. Equity Index Participations

Rule 900F. (a) Applicability. The Rules in this Section are applicable only to Equity Index Participations. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. In addition, the following Options Rules shall be specifically applicable to such trading: 900(b), *902*, 907, 908, 909, 920, 921, 922, 923, 924, 925, 926, 930, 932, 950(b), 950(c), *953*, 954, 955, 956, 957, 958, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, [981], 918C. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, Equity Index Participations are included within the definition of "security" or "securities" as which terms are used in the Constitution and Rules of the Exchange.

Compliance with Rules 904, 905, 906, shall be determined as set forth in Rules [905F, 906F, and 907F] *907F, 908F, and 909F.*

(b) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise indicates, have the meanings herein specified.

(1) *Equity Index Participation*—The term Equity Index Participation means a security based on the [spot] *current* value of an index of stocks, of indeterminate duration, and paying [its purchasers] *holders an amount equal to* a proportionate share of *the* dividends declared on the component stocks of the stock index underlying the Equity Index Partipation.

(2) Delivery-time—The term "delivery time" means the point in time each quarter of the year when a holder of one or more delivery units of a class of Equity Index Participations, upon exercise of the delivery privilege, may obtain physical delivery of the shares of the component stocks in the stock index underlying such class of Equity Index Participations. The delivery time for such quarter will be determined and made public by the Exchange before the beginning of the quarter.

[(2)] *(3) Cash-out time*—The term "cash-out time" means the point in time each quarter of the year when a holder of an Equity Index Participation *of a particular class, upon exercise of the cash-out privlege,* may obtain the [closing] *liquidating* index value *of such class of Equity Index Participations* [upon exercise of the cash-out privilege]. The cash-out time for each *quarter will coincide with "delivery time" and* will be determined and made public by the Exchange before the beginning of the quarter.

[(3)] *(4) Reporting authority*—The term "reporting authority" in respect of a particular [index] *class of Equity index participations* means either the Exchange or the institution or reporting service designated by the Exchange as the official source for calculating and reporting the current index value or the [closing] *liquidating* index value *of the underlying index* [and]; the proportionate share of dividend[s] *equivalents* payable to Equity Index Participation holders[.]; *and the component index stocks, the number of shares of each component stock to be delivered to holders upon exercise of the delivery privilege, and the amount of cash, if any, required to be paid to such holders.*

(5) Physical delivery facilitator—The term "physical delivery facilitator" means a member or member organization designated by the Exchange to make physical delivery at delivery time of the component stocks of the underlying index to Equity Index Participation holders who exercise the delivery privilege, in the event that the number of delivery units for which holders have requested physical delivery exceeds the number of delivery units offered for physical delivery by persons holding short positions.

(6) "Delivery unit"—The term "delivery unit" means the minimum number, as specified by the Exchange, of Equity Index Participations of a particular class, that must be held in an individual account by a holder at the time of exercise of the delivery privilege, or that n st be maintained as a short position in an equivalent account by a person who notifies the Options Clearing Corporation of a desire to make physical delivery of securiites to a holder, if assigned an exercise.

Designation of an Index

Rule 901F. *The Exchange may designate one or more stock indexes as underlying indexes for Equity Index Participations traded on the Exchange. The Equity Index Participations based on each particular stock index shall be designated as a separate class and shall be identified by a unique symbol.* The stocks that are [the basis for the calculation of] *included in* an index on which [the] Equity Index Participation*s* [is] *are* based shall be selected by the Exchange, *or by such other person as shall have a proprietary interest in and authorized use of such index,* and may be revised from time to time [in the Exchange's discretion] as *may be deemed* necessary or appropriate to maintain the quality and character of the index.

Index Calculation and Reporting

Rule 902F. (a) The current index value in respect of an index on which [an] *a class of* Equity Index participation*s* is based shall be derived from the reported prices of the underlying securities that are the basis of the index, as reported by the primary market for such underlying securities.

[Rule 903F. (a)] *(b)* The Exchange shall cause to be *calculated and* reported at specified intervals the current index value of [an] *the* index underlying [an] *each class of* Equity Index Participation*s* during each day the Exchange is open for trading, and shall [cause to be disseminated] *make available* the [closing] *liquidating* index value of such underlying index promptly after such calculation is [available] *made* at the quarterly *delivery or* cash-out time.

(c) The Exchange shall maintain, in files available to the public, information identifying the stocks included in each index underlying [an] *a class of* Equity Index Participation*s* and the method used to determine the current index value *and liquidating index value.*

Liquidating Index Value

[Rule 902F (b)] *Rule 903F* The [closing] *liquidating* index value in respect of a particular *class of* Equity Index Participation*s* [index] shall be derived from the [reported] *opening* prices *reported by the primary market for* [of] the component stocks of the stock index [at a time or times specified by the Exchange] *on the first trading day following the date each quarter as of which* [for determining payment to which an] Equity Index Participation*s* holders [is] *are* entitled [upon] *to* exercise of the *delivery privilege or the* cash-out privilege. *For any component*

stock that does not open for trading on such day, the closing price on the last preceding day on which such stock traded on the primary market will be used for purposes of determining the liquidating index value.

Cash-Out Privilege

904F. The holder of an Equity Index Participation *who has not exercised the delivery privilege with respect to such Participation* shall have the right to obtain on each cash-out time, *upon exercise* in accordance with the Rules of The Options Clearing Corporation, the [closing] *liquidating* index value of [the specific] *such* Equity Index Participation. [The deadline for exercising the cash-out privilege will be determined and made public by the Exchange before the beginning of the quarter.]

Delivery Privilege

Rule 905F. The Holder of one or more delivery units that has not exercised the cash-out privilege with respect to such units shall have the right to obtain on each delivery time, upon exercise of one or more full delivery units in accordance with the Rules of the Options Clearing Corporation, the physical delivery of the proportionate number of shares of each stock comprising the underlying index, subject to the following conditions:

(a) The number of shares of each stock to be delivered shall be calculated separately for each delivery unit exercised.

(b) If the number of shares of a particular stock would amount to less than ten full shares, the cash value of such shares shall be paid to the exercising holder rather than physical delivery of shares.

(c) The number of shares of each stock to be delivered shall be rounded down to the nearest whole share and no partial shares will be delivered; the cash value of partial shares shall be paid to the exercising holder.

(d) If any component stock does not open for trading on the primary market for such stock on the trading day for which opening prices are used to calculate the liquidating index value, the cash value of the proportionate number of shares of such stock which would otherwise be deliverable shall be paid to the exercising holder rather than physical delivery of shares.

(e) In all cases where the cash value of shares is to be paid to the exercising holder in lieu of physical delivery of shares, as above provided, such cash value shall be established by using the same prices for such shares as are used in calculating the liquidating index value for the particular class of Equity Index Participations.

(f) The holder of a delivery unit who exercises the delivery privilege with respect thereto shall pay a delivery fee, in an amount to be established by the Exchange from time-to-time and announced prior to the beginning of the quarter to which it is applicable, which fee shall be paid to the party making physical delivery of the shares in respect to such delivery unit.

Payment or Delivery Upon Exercise

906F. (a) Except as provided in paragraph (b) of this Rule, a person maintaining a short position in a class of Equity Index Participations and who is assigned a notice of exercise with respect thereto pursuant to Rule 910F, shall be obligated, in accordance with the Rules of the Options Clearing Corporation, to pay to the Options Clearing Corporation the liquidating index value of the Equity Index Participation or Participations so assigned.

(b) A person maintaining a short position in a class of Equity Index Participations equal to or in excess of the delivery unit for such class may notify the Options Clearing Corporation, in accordance with these Rules and the Rules of the Options Clearing Corporation, prior to any delivery time, of such person's desire to make physical delivery of shares of the stocks comprising the index underlying such class of Equity Index Participations if assigned a notice of exercise. In the event such person is assigned a notice of exercise for a delivery unit, he shall be obligated to make physical delivery of the shares of the stocks comprising the underlying index and to pay the cash amounts calculated in accordance with Rule 905F to the Options Clearing Corporation. Assignments of notices of exercise providing for physical delivery of shares of underlying stocks shall be made only on the basis of whole delivery units. Any portion of a person's short position in a class of Equity Index Participations not terminated by an assignment of notice of exercise of a delivery unit shall be subject to assignment of an exercise notice requiring the payment of cash as provided in paragraph (a) of this Rule.

Position Limits

Rule [905F.] *907F.* In determining compliance with Rule 904, Equity Index Participations shall be subject to a position limit of 15 million Equity Index Participations with respect to [any particular underlying index] *each separate class.*

Exercise Limits

Rule [906F.] *908F.* In determining compliance with Rule 905, exercise limits applicable to Equity Index Participations shall be equivalent to the position limit of set forth in Rule [905F] *907F.*

Reporting of Equity Index Participation Positions

Rule [907F.] *909F.* In determining compliance with Rule 906, each member and member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a partner, officer, director or employee of the member organization, and each customer account, which has established an aggregate position of 200,000 Equity Index Participations (whether long or short) [covering the same underlying index] *of any particular class.*

Exercise of Delivery or Cash-Out Privilege

Rule [908F.] *910F.* (a) Notice of exercise of the Equity Index Participation *delivery or* cash-out privilege must be provided by a holder of an Equity Index Participation on or before a time specified and made public by the Exchange and which is in accordance with the Rules of The Options Clearing Corporation. Specific exercise cut-off times will also be delineated for Exchange member organizations. *The deadline for exercising the delivery or cashout privilege in respect of a class of Equity Index Participations shall be announced by the Exchange prior to the beginning of the quarter to which it is applicable.* An exercise notice may be tendered to the Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the Equity Index Participation is carried. Members and member organizations shall establish fixed procedures not inconsistent with the rules and policies of the Exchange and The Options Clearing Corporation, as to the latest hour at which they will accept exercise notices from their customers.

(b) A person maintaining a short position of one or more delivery units of a class of Equity Index Participations and that desires to make physical delivery of securities if assigned an exercise notice, must provide notice on or before a time specified by the Exchange prior to each exercise time in accordance with the Rules of the Options Clearing Corporation.

[(b)] (c) The term "exercise instruction," with respect to a customer, means the notice given to a member organization to exercise an Equity Index Participation. All such exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut-off time but prior to the *delivery or* cash-out time (i) in order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange Equity Index Participation transactions, or (iii) where exception circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

Allocation of Equity Index Participation Exercise Notices

Rule [909F.] *911F.* (a) Each member organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in Equity Index Participations in such member organization's customers' accounts. *Notices to exercise the delivery privilege shall be allocated, prior to allocation of notices to exercise the cash-out privilege, to persons that have provided notice of a desire to make physical delivery of shares of the stocks comprising the underlying index, if assigned. All* such allocations shall be made on a "first-in, first-out" or automated random selection basis that has been approved by the Exchange or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options will be deemed to apply to the allocation of exercise notices for Equity Index Participations.

(b) Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange.

(c) Each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

Physical Delivery Facilitators

Rule 912F. (a) In the event that the number of delivery units of a particular class of Equity Index Participations for which exercising holders have requested physical delivery exceeds the number of delivery units of such class made available by persons with short positions, a physical delivery facilitator designated by the Exchange, upon notification by the Options Clearing Corporation, shall make delivery, in accordance with rules and procedures of the The Options Clearing Corporation, to holders of Equity Index Participations exercising the delivery privilege of the number of shares of each component stock that is required to be delivered at delivery time, as provided in Rule 905F.

(b) The Exchange may designate one or more member organizations, from among those making application for the privilege, to perform the functions of physical delivery facilitator, as provided in paragraph (a) of this Rule, for each class of Equity Index Participations traded on the Exchange. The specialist unit for a class of Equity Index Participations may be designated as physical delivery facilitator for such class.

Bids and Offers

Rule [910F.] *913F.* All bids and offers made on the trading floor for Equity Index Participations shall be deemed to be for one unit of trading unless a specified greater number is expressed in the bid or offer. A bid or offer for more than a unit of trading of Equity Index Participations shall be deemed to be for the amount thereof or a smaller number of units of trading. The unit of trading in Equity Index Participations shall be 100 Equity Index Participations unless otherwise designated by the Exchange.

Commentary .01 Transactions in Equity Index Participations may be effected until 4:15 each business day.

Limitation of Exchange Liability

Rule [911F.] *914F.* Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the [closing] *liquidating* index value, [and] tracking dividend payout dates, [or] computing proportionate dividend *equivalent* payouts, *reporting the component stocks of an underlying stock index, or calculating the number of shares of component stocks to be delivered or the amount of cash to be paid to holders in connection with an exercise of the delivery privilege,* resulting from an act, condition or cause beyond the reasonable control of the Exchange or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current index value, or the [closing] *liquidating* index value by the Exchange or the Reporting Authority.

S&P 500 Index. Rule [912F] *915F.* Standard & Poor's Corporation ("S&P") has licensed the Exchange to use the S&P 500 Index for purposes of trading in Equity Index Participations. S&P has indicated that, while S&P shall obtain information for inclusion in or for use in the calculation of the S&P 500 Index from sources which S&P considers reliable, S&P does not guarantee the accuracy and/or the completeness of the S&P 500 Index or any data included therein. S&P and the Exchange make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the S&P 500 Index or any data included therein in connection with the rights licensed or for any other use. S&P and the Exchange make no express or implied warranties, and disclaim all warranties of merchantability or fitness for a particular purpose with respect to the S&P 500 Index or any data included therein.

Reserved Authority. Rule [913F] *916F.* The Exchange may, upon notice of at least one year, require the holders of and obligors on outstanding Equity Index Participations [based on a] *of any* particular [index] *class* to settle their contracts at the [closing] *liquidating* index value determined [by] *as of* a designated *delivery or* cash out time under the following circumstances:

(i) In the event of insubstantial trading activity in Equity Index Participations *of such class* or other exceptional circumstances as determined by the Exchange, in its discretion, or

(ii) In the event that any agreement pursuant to which the Exchange is licensed to use a particular index for trading Equity Index Participations is terminated, and no other market exists

for Equity Index Participations based on such index.

* * *

Margin Accounts. Rule 462 (a) though (d)7—No change.

462(d)8. Equity Index Participations. The margin which must be maintained in margin accounts of customers, whether members, partners of members, member firms, member corporations or stockholders therein or non-members shall be as follows:

1. 25% of the market value of all "long" Equity Index Participation positions in the account plus;

2. 30% of the market value, in cash, of each "short" Equity Index Participation position in the account;

3. No margin need be required in respect of an Equity Index Participation carried "short" in a customer's account when the customer has *executed and* delivered to the member organization carrying the account [a letter of guarantee] *an escrow receipt* meeting the requirements of Rule [610] *1909* of the Options Clearing Corporation. [certifying that the guarantor holds for the customer as security for the letter 1) cash, 2) cash equivalents, 3) one or more qualified securities, or 4) a combination thereof, that such deposit has a market value, computed as of the close of each business day in which the "short" position is carried in the customer account, of not less than 130% of the aggregate current market value of the Equity Index Participations, and that the guarantor will promptly pay the member organization the exercise settlement amount in the event the account is assigned an exercise notice. A qualified security has the meaning specified in Rule 462 Commentary .04.]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex has proposed specific rules applicable to two Equity Index Participation ("EIP") securities based on the Major Market Index ("XMI") and the S&P 500 Index. (See Securities Exchange Act Release No. 25664, May 5, 1988; Securities Exchange Act Release No. 25942, July 25, 1988).

The Exchange is amending its proposal to permit EIP holders to receive actual physical delivery of shares of the component stocks of the underlying index upon exercise of a specified minimum number of EIPs. Physical delivery would be permitted once each quarter on the day coinciding with "triple-witching" options expiration date on the third Friday of March, June, September, and December ("Exercise Friday"). The cash-out alternative also would be permitted on such dates, as originally proposed.

The Exchange believes a physical delivery feature will provide certain large EIP holders and sellers with greater market and investment flexibility, particularly in conjunction with other hedging vehicles, and the Exchange's discussions with industry participants indicate that a physical delivery feature would be attractive to such investors. Institutional investors are acquiring "market baskets" of securities replicating indexes and physical delivery of EIPs could serve as a convenient means of acquiring such baskets. Similarly, certain institutional investors may find it attractive to make physical delivery to holders. While the Exchange believes that a physical delivery feature adds to the attractiveness and flexibility of EIPs, the Exchange does not anticipate that the number of exercises for physical delivery will be so great as to have a significant impact on market prices for individual stocks.

The Exchange is further amending its filing to modify proposed Rule 900F regarding the applicability of certain options rules to EIPs trading; to make technical modifications to certain EIPs rules as originally proposed; and to amend proposed Rule 462(d) relating to EIPs margin requirements.

"Delivery privilege" and exercise notices. The "delivery privilege" will be permitted for EIP holders that submit notice of exercise of the minimum number of EIPs—the "delivery unit"—specified by the Exchange for exercise of the delivery privilege. The Exchange anticipates that it will require holders to submit notice for physical delivery in minimum delivery units of 50,000 EIPs per unit for the S&P 500 Index, and 25,000 EIPs per unit for the XMI, or in multiple delivery units. The Exchange believes that permitting exercises for physical delivery in quantities below these levels would be impractical because of the minute number of shares of individual stocks that would be deliverable. Sellers that desire to make physical delivery if assigned must give timely notice in advance of each exercise date, and must maintain a short EIP position of one or more delivery units in order to be eligible for assignment of an exercise calling for physical delivery. All exercise notices by EIP holders, and notices by persons with short positions desiring to make physical delivery if assigned, must be delivered to the Options Clearing Corporation ("OCC") no later than the time specified in OCC Rules.

Assignment of exercise notices. Exercise notices requesting physical delivery of one or more delivery units will be assigned first, on a random basis, to those short positions having given notice of desire to make physical delivery. If the number of delivery units for which holders have tendered exercise notices is less than the number of delivery units offered by persons having short positions, the unassigned short positions will be included in the pool for random assignment of exercises of the cash-out privilege. All cash-out exercise notices will be randomly assigned to remaining short positions, after assignment of all physical delivery exercise notices.

Liquidating index value. EIPs exercised for cash will be settled on the basis of the liquidating index value which will be calculated after the close on Exercise Friday. Such value will be based on the primary market opening prices for component index securities on Exercise Friday. The price of any stock that fails to open for trading on Exercise Friday will be based on the closing price on the last preceding day on which it traded on the primary market for such stock. Any person holding a short position in a class of EIPs and assigned an exercise notice will be required to pay the liquidating index value for such class of EIPs.

Determination of physical delivery composition. The Exchange will announce the stocks, and numbers of shares of each required to be delivered in satisfaction of a physical delivery exercise after the close of the market on the Exchange business day preceding Exercise Friday. The number of shares of each stock to be delivered will be

rounded down to the nearest whole share with partial shares being settled for cash. S&P 500 component stocks requiring delivery of fewer than 10 shares will also be settled for cash. In addition, any stock, including those which would require delivery of less than 10 shares, failing to open on Exercise Friday will be settled for cash. The prices of all such shares to be settled for cash will be determined in the same manner as the prices used for determining the liquidating index value of EIPs that are exercised for cash.

The exercising holder will also pay a fee, established by the Exchange, for physical delivery of each delivery unit, to be paid over to the person making physical delivery of such unit.

If the number of delivery units for which holders have requested physical delivery exceeds the number of units made available for delivery by persons with short positions, an Exchange designated "physical delivery facilitator" will assume responsibility for delivering the physical shares with respect to such excess number of units. The facilitator, who may either deliver shares out of inventory, buy shares at the opening on Exercise Friday or borrow shares (possibility against hedged positions in other markets), will be compensated for such deliveries out of the proceeds received from shorts who have been assigned exercise notices. Such compensation will be based on the same share prices that are used for calculating the liquidating index value for cash settled exercises. The Exchange contemplates that initially it will designate only a single facilitator for each class of EIPs and that in each case the facilitator may be the specialist unit for such class of EIPs. After gaining experience with physical delivery, the Exchange may determine it to be appropriate to designate multiple facilitators for each class of EIPs.

Other changes. The Exchange also is amending its filing to clarify some of the technical aspects to EIPs trading. Specifically, (1) proposed Rule 900F has been amended to add Amex Options Rules 902 (Rights and Obligations of Holders and Writers) and 953 (Acceptance of Bid or Offer) incorporating certain rules of the OCC into rules applicable to EIPs trading; (2) Rule 981 (Allocation of Exercise Notices) has been deleted because the allocation of EIPs exercise notices are specifically discussed in proposed Rule 911F; (3) proposed Rule 903F has been amended to describe the manner of calculating the "liquidating index value"; and (4) proposed Rule 462 dealing with margin requirements for short positions in EIPs has been amended to require the delivery of an executed escrow receipt that will meet the requirements of OCC Rule 1909.

In addition, the filing is being amended to clarify that bids and offers for EIPs will be quoted in decimals rather than in fractions. The Exchange believes use of decimals will allow the differential between the bid and offer to be narrower, thus fostering tighter and better markets.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objective(s) of section 6(b)(5) in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has discussed the proposed amendments with the OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Annex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secertary, Securities and Exchange Commission, 540 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal officer of the Amex. All submissions should refer to the file number in the caption above and should be submitted by November 30, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 2, 1988.

[FR Doc. 88-25865 Filed 11-8-88; 8:45 am]

BILLING CODE 8010-01-M

Release No. 34-26240; File No. SR-NASD-88-12

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of Rules Designed To Implement the Provisions of the Government Securities Act of 1986

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 5, 1988, and amended on September 26 and October 18, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. Pursuant to the provisions of the Act, as amended by the Government Securities Act of 1986 ("GSA"), the amended proposal adopts new rules that permit the NASD to enforce compliance by its members and persons associated with those members, with the provisions of the Act in connection with transactions by members in government securities.[1] The

[1] Prior to the enactment of the GSA, section 15A(f) of the Act prohibited the NASD from adopting and enforcing compliance with its own rules in connection with transactions by members in government securities. The GSA, however, amended section 15A(f) of the Act to empower the NASD to adopt and implement rules to govern transactions in government securities, provided those rules are designed to enforce compliance with the provisions of the Act and the rules and regulations thereunder, or to further other NASD oversight objectives such

Continued

amended proposal also revises the NASD's By-Laws to prescribe standards for the admission of government securities brokers and dealers as members of the NASD, and to provide for the registration with the NASD of principals and representatives who: (1) Engage in government securities business on behalf of government securities brokers or dealers, and (2) have not previously been registered with the NASD as principals or representatives.[2]

The new government securities rules require members, with respect to transactions in government securities, to: (1) Maintain adequate books and records; (2) establish and enforce procedures to ensure proper supervision of persons associated with members; (3) reduce or refrain from expanding their operations if their liquid capital falls below prescribed levels, or "for any other financial or operational reason"; (4) obtain the written approval of the NASD prior to operating in a manner that either changes their exemptive status from an introducing firm to a firm that carries customer accounts under Commission rule 15c3–3, or disqualifies them from exemption under that rule; and (5) file all advertising concerning government securities with the NASD, subject to review according to standards specified in the rules. To ensure the enforcement of the Act and rules thereunder with respect to transactions in government securities, the rules further set forth procedures pursuant to which customers of members or the NASD itself may file complaints against members with the NASD's District Business Conduct Committee. The rules further require members to report to the NASD regarding any matter that is the sujbect of an NASD investigation or hearing, and to permit the NASD to inspect the members' books and records in connection with an investigation, a determination as to the filing of a complaint, or a hearing on a complaint. Finally, the rules prescribe sanctions for violation of the Act and rules thereunder in connection with transactions in government securities.

Notice of the propsed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25871, June 30, 1988) and by publication in the **Federal Register** (53 FR 25558, July 7, 1988). No letters of comment were received. On September 26 and October 18, 1988, respectively, the NASD filed amendments to its proposal. The Commission did not solicit comment on those amendments because they either conformed the language of the government securities rules and NASD By-Laws to the original intent of the NASD drafting committee or incorporated into the government securities rules new provisions that had been approved by the Commission pursuant to section 19(b)(2) of the Act and added to the NASD's Rules of Fair Practice since the drafting of the government securities rules.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations therunder applicable to the NASD and, in particular, the requirements of sections 15, 15A, 15C and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: November 2, 1988.

[FR Doc. 88–25864 Filed 11–8–88; 8:45 am]

BILING CODE 8010–01–M

as the inspection of members' books and records and the prohibition of fraudulent, misleading, deceptive, or false advertising (*see* section 15A(f)(2) of the Act). (In the areas of financial responsibility, protection of investors' securities and balances, recordkeeping, and reporting and audit of government securities brokers and dealers, the GSA empowers the Department of the Treasury to adopt rules and regulations; these rules and regulations are to be enforced by the NASD and by the Commission. Sections 15(c)(1) and 19(g)(1)(B) of the Act.)

[2] The GSA imposes, for the first time, the requirements of Commission registration upon brokers and dealers, other than financial institutions, that engage exclusively in transactions in government securities ("sole government securities brokers and dealers") (*see* section 15C(a)(2)(A) of the Act). Accordingly, as "registered broker[s] or dealer[s]" under the Act, these sole government securities brokers and dealers may effect transactions in over-the-counter securities only if they are members of the NASD (section 15(b)(8) of the Act).

[3] The amendments clarify that: (1) The NASD's authority to adopt the government securities rules derives from section 15A(f)(2) of the Act (Government Securities Rules, section 1); (2) the registration requirements applicable to government securities principals and representatives apply only to those principals and representatives not previously registered as such with the NASD (NASD By-Laws, Schedule C, Article X, sections 1(a) and (b) and 2(a) and (b); and (3) the "early warning rule" requires a member to restrict its business when the member's liquid capital falls below certain levels *after deduction of ownership equity, together with maturities of subordinated debt scheduled during the following six months* (Government Securities Rules, sections 6(b)(1)(C) and 6(c)(1)(C)). Finally, the amendments provide that there is no ceiling on the amount of a fine the NASD may impose on a member or person associated with a member for violation of the Act and rules thereunder in connection with a transaction in government securities (Government Securities Rules, section 12(2)).

[Rel. No. IC–16623; 811–2311]

California Fund for Investment in U.S. Government Securities, Inc.; Notice of Application

November 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: California Fund for Investment in U.S. Government Securities, Inc.

Relevant 1940 Act Section: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on February 23, 1988 and amended on September 20, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2499 West Shaw Avenue, Fresno, CA 93711.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end diversified management company which registration statement under the Securities Act of 1933 on November 9, 1972. Applicant's registration statement became effective in December of 1972, at which time Applicant commerced offering its shares.

2. On September 18, 1987 Applicant's Board of Directors adopted a plan of liquidation. Proxy material was sent to Applicant's stockholders on November 16, 1987, and on December 14, 1987 the holders of a majority of Applicant's outstanding shares approved the proposal to liquidate and dissolve Applicant.

3. On September 18, 1987 Applicant's Board of Directors established a reserve for liquidation expenses of $12,000, which reduced Applicant's net asset value per share. All liquidation expenses were paid from the reserve, which expenses were allocated as follows: Auditing, $10,500; legal, $700; SEC, $125; printing proxy, $250; shareholder meeting, $100; miscellaneous, $325.

4. At December 16, 1987 Applicant had outstanding 115,000 shares of capital stock with a asset value per share of $8.35, on which date a liquidating dividend of $8.35 per share was distributed to all shareholders of record. Applicant filed a Certificate of Dissolution with the California Secretary of State on December 31, 1987.

5. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

6. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, has no remaining securityholders and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

7. On February 29, 1988 Applicant filed its Form N–SAR for the period ending December 31, 1987.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25867 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16620; File No. 812–7070]

North American Life And Casualty Co., et al.

November 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: North American Life and Casualty Company (the "Company"), NALAC Variable Account B ("Variable Account B") and NALAC Financial Plans, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of Variable Account B of a mortality and expense risk charge.

Filing Date: The application was filed on July 18, 1988. Amendments were filed on September 8, 1988 and September 19, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on November 28, 1988. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549; North American Life and Casualty Company, NALAC Variable Account B and NALAC Financial Plans, Inc., 1750 Hennepin Avenue, Minneapolis, Minnesota 55403.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272–3450; Clifford E. Kirsch, Special Counsel, at (202) 272–2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial Copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Company is a stock life insurance company organized under the laws of the state of Minnesota and is a wholly-owned subsidiary of Allianz Versicherungs-AG. The Company established Variable Account B on May 31, 1985 pursuant to the provisions of Minnesota insurance law. Variable Account B is a segregated investment account of the Company and is registered as a unit investment trust pursuant to the provisions of the 1940 Act.

2. The Company proposes to offer individual flexible payment variable annuity contracts (the "Contracts") which are available for both qualified and Non-Qualified Retirement Plans under the Internal Revenue Code. The purchase payments under the Contracts will be allocated to Variable Account B. Variable Account B is divided into Sub-Accounts. Each Sub-Account is invested solely in the shares of one of the Funds of Franklin Valuemark Annuity Funds (the "Trust"), a trust registered under the Act as a diversified open-end management investment company. The Contracts will be distributed through the principal underwriter, NALAC Financial Plans, Inc., a wholly-owned subsidiary of the Company.

3. The Company will deduct an annual Contract Maintenance charge of $30 from the Contract Value of each Contract Anniversary, and an Administrative Expense Charge, equal on an annual basis to .15% of the average daily net assets of Variable Account B, on each Valuation Date. These charges are designed to reimburse the Company for the expenses it incurs in the establishment and maintenance of the Contracts and Variable Account B. Applicants intend to rely upon Rule 26a–1 with respect to the deduction of the Contract Maintenance Charge and the Administrative Expense Charge. The Applicants represent that the Administrative Expense Charge will be reduced in the future to the extent that the amount of this charge is in excess of that necessary to reimburse the Company for its administrative expenses.

4. The Contracts do not provide for a front-end sales charge to be deducted from purchase payments. Instead, if all or a portion of the Surrender Value is surrendered, a Contingent Deferred Sales Charge (sales load) will be calculated at the time of each surrender and will be deducted from the Contract Value. The Contingent Deferred Sales Charge applies only to those purchase payments received within five (5) years of the surrender. In calculating the Contingent Deferred Sales Charge, purchase payments are allocated to the amount surrendered on a first-in, first-out basis. The amount of the Contingent Deferred Sales Charge is calculated by: (a) Allocating purchase payments to the amount surrendered; and (b) multiplying each allocated purchase payment that has been held under the Contract for the period shown below by the charge shown below:

Years since payment	Charge (percent)
0–1	5
1–2	5
2–3	4
3–4	3
4–5	1.5
5+	0

and (c) adding the products of each multiplication in (b) above. A Contrct Owner may, not more frequently than once annually on a cumulative basis, make a surrender each Contract Year of fifteen (15%) percent of purchase payments paid less any prior surrenders without incurring a Contingent Deferred Sales Charge. In no event will the aggregate Contingent Deferred Sales Charge exceed 9% of the total purchase payments made.

5. The Company proposes to assess each Sub-Account of Variable Account B with daily charges for mortality and expense risks which amount to 1.25% per annum (consisting of approximately .90% for mortality risks and approximately .35% for expense risks). The mortality risk assumed by the Company arises from its contractual obligation to make annuity payments after the Income Date for the life of the Annuitant in accordance with the annuity rates guaranteed in the Contracts. The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including Contract maintenance costs, administrative costs, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount received from the Contract Maintenance Charge and the Administrative Expense Charge. If the mortality and Expense Risk Charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The Company expects a profit from this charge. The Mortality and Expense Risk Charge is guaranteed by the Company and cannot be increased.

6. Applicants represent that the 1.25% total which the Company proposes to charge for the Mortality and Expense Risk Charge is within the range of industry practice for comparable annuity products. Applicants' representations are based upon an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the expense risks taking into account the existence of charges against separate account assets for other than mortality and expense risks and the estimated costs, now and in the future, for certain product features as well as an examination of comparable annuity products. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail this analysis.

7. Applicants acknowledge that the Contingent Deferred Sales Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Contingent Deferred Sales Charge. In such circumstances a portion of the Mortality and Expense Risk Charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Variable Account B and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commisison.

8. The Company represents that Variable Account B will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25868 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Greyhound-Dobbs Incorporated, 14% Senior Notes, Due 1994, New York Stock Exchange) File No. 1–6242

November 2, 1988.

Greyhound-Dobbs Incorporated ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to remove the above specified securities from listing and registration on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

As of October 4, 1988, there was $40,000,000 of the Company's 14% Senior Notes, due 1994, ("Notes") outstanding. As of that date there were three title holders of record and nineteen beneficial holders. The Depository Trust Company ("DTC") is one of the holders of record on behalf of the 19 beneficial holders. Since January 1, 1988, there has been no trading on the Exchange that the applicant has been able to discover. The only trading in the Notes the Company is aware of is between beneficial holders within the DTC. The trading data the Company has gathered establishes that there is little public interest in trading the Notes. Because of the small number of holders, the Company believes it is unlikely that any significant trading will occur in the future.

Any interested person may, on or before November 23, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the

Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25924 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (MGI Properties, Common Stock, $1 Par Value, American Stock Exchange) File No. 1–6833

November 2, 1988.

MGI Properties ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company recently listed and registered this security on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common shares from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common shares on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its shares and believes that dual listing would fragment the market for its common shares.

Any interested person may, on or before November 23, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25925 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Haskell and Latimer Counties, OK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Haskell and Latimer Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Frank N. Cunningham, Assistant Division Administrator, Federal Highway Administration, 200 NW. Fifth Street, Room 454, Oklahoma City, Oklahoma 73102, Telephone: (405) 231–4725.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oklahoma Department of Transportation (ODOT), will prepare an environmental impact statement (EIS) on a proposal to construct a new highway between Red Oak in Latimer County and Lequire in Haskell County. The proposed new highway, to be designated as State Highway 82 (SH 82), would be a two-lane facility beginning at US Route 270 near Red Oak and extending northward approximately 13 miles to State Highway 31 near Lequire.

The proposed SH 82 would link the communities of Red Oak and Lequire as well as surrounding areas now separated by a natural barrier, the Sansbois Mountains. Currently, all highway users in this area are forced into circuitous travel (up to 50 miles) due to the lack of a connecting facility. Alternatives under consideration include taking no action and several build alternates. The build alternates will consider several locations and designs to address both the transportation needs of the area and any possible social, economic, and environmental effects of building the proposed new highway.

Letters describing the proposed action and soliciting comments have previously been sent to appropriate Federal, State, and local agencies during the Environmental Assessment stage of environmental processing. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 2, 1988.

Frank N. Cunningham,

Assistant Division Administrator, Oklahoma City, Oklahoma.

[FR Doc. 88–25883 Filed 11–8–88; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Treasury Customs; Commercial Operations Advisory Committee

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Announcement of Membership and First Meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

SUMMARY: This notice announces the membership of the Treasury Advisory Committee on Customs Commercial Operations and sets the date of the Committee's first meeting.

DATE: The first meeting of the Advisory Committee is set for December 16, 1988, at 9:30 a.m. in Room 4121 of the Department of Treasury, 1500 Pennsylvania Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4004, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566–8435.

SUPPLEMENTARY INFORMATION: On March 29, 1988, Treasury published in the **Federal Register** (53 FR 10183) a Notice of the establishment, in accordance with section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), and the Federal Advisory Committee Act, of an

Advisory Committee on Commercial Operations of the United States Customs Service, in order to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. The Committee's Charter has been filed with the General Services Administration, the Library of Congress, and the appropriate Houses of Congress for a two-year term effective October 17, 1988.

Membership

The March 29, 1988 Notice also solicited membership for the Committee. The selection process and background checks have been completed and Treasury announces that the following persons have been requested to serve on the Committee:

Robert J. Aaronson, The Port Authority of New York and New Jersey
Myles J. Ambrose, Ross & Hardies Law Offices
Lana R. Batts, American Trucking Association
Fermin Cuza, Mattel Toys
David W. Danjczek, Litton Industries
Alfred R. DeAngelus, Logic International, Inc.
Harvey A. Isaacs, Siegel, Mandell & Davidson, P.C.
Richard J. Judy, Dade County Aviation Department
James E. Landry, Air Transport Association of America
Arthur L. Litman, Castelazo & Associates
Eugene J. Milosh, American Association of Exporters and Importers
Stanley Nehmer, Economic Consulting Services, Inc.
David H. Phelps, American Iron and Steel Institute
John J. Robinson, Association of American Railroads
Jerry D. Rucker, Dooley, Rucker, Maris & Foxman
Robert P. Schaffer, Price Waterhouse
William H. Stine, National Business Aircraft Association, Inc.
Gary S. Taylor, American President Companies, Ltd.
Peter Tower, C.J. Tower & Sons Customhouse Brokers
Paul F. Wegener, M.G. Maher & Company, Inc.

First Meeting

The first meeting has been set for December 16, 1988, commencing at 9:30 a.m. in Room 4121, at the Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC. The agenda for this first meeting is to identify initial issues for discussion and to set procedures for the conduct of the Committee.

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for anyone planning to attend the meeting to call in advance in order to be admitted to the building. Persons other than Advisory Committee members who plan to attend should contact Dennis O'Connell at (202) 566–8435 no later than 5 working days prior to the meeting in order to be admitted to the building for the meeting.

Dated: October 25, 1988.

Gerald L. Hilsher,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88–25869 Filed 11–8–88; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Recordation of Trade Name: "J & J America, Inc."

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Recordation.

SUMMARY: On July 19, 1988, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "J & J AMERICA, INC," was published in the **Federal Register** (53 FR 27258). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in writing by any person in opposition to the recordation and received not later than September 19, 1988. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14 Customs Regulations (19 CFR 133.14), the names "J & J AMERICA, INC," is recorded as the trade name used by J & J America, Inc., a corporation organized under the laws of the State of Florida, located at 11401 SW. 40th Street, Miami, Florida 33165.

The trade name is used in connection with the following merchandise manufactured in Korea: Textiles; textile products; fabrics; ladies handbags; luggage; audio/visual equipment; televisions; video camera recorders; electronic accessories; sporting goods; womens fashion accessories and costume jewelry.

FOR FURTHER INFORMATION CONTACT: Bettie Coombs, Value Special Programs and Admissibility Branch, 1301 Constitution Ave., NW., Washington, DC 20229 (202) 566–5765.

Dated: October 31, 1988.

Marvin M. Amernick,

Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 88–25876 Filed 11–8–88; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 1, 1988.

By direction of the Administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Office of Acquisition and Materiel Management.
2. Application for United States Flag for Burial Purposes.
3. VA Form 90–2008.
4. The form is used to apply for a United States burial flag for a deceased veteran. In many cases, this form also provides the Government with the first notice of death of the veteran.
5. On occasion.
6. Individuals or households.
7. 386,000 responses.
8. 96,500 hours.

9. Not applicable.

[FR Doc. 88-20849 Filed 11-8-88; 8:45 am]
BILLING CODE 8320-01-M

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503 (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 1, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Veteran's Application for Increased Compensation Based on Unemployability.
3. VA Form 21-8940.
4. The form is used to gather information for a claim for increased disability compensation based on individual unemployability due to the veteran's service-connected disability(ies).
5. On occasion.
6. Individuals or households.
7. 18,000 responses.
8. 13,500 hours.
9. Not applicable.

[FR Doc. 88-25850 Filed 11-8-88; 8:45 am]
BILLING CODE 8320-01-M

Availability of Report of 38 U.S.C. 219 Program Evaluation

Notice is hereby given that the Surgical Program Evaluation has been completed.

Single copies of the Surgical Program Evaluation Report are available. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. Joseph W. Bauernfeind, Acting Director, Studies and Evaluation Service, Veterans Administration (072), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 2, 1988.

By direction of the Administrator.

H. Raymond Wilburn,

Acting Director, Office of Program Analysis and Evaluation.

[FR Doc. 88-25851 Filed 11-8-88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Correction of Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on October 31, 1988 (53 FR 43966) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for November 1, 1988. This notice is to revise the agenda for that meeting to add two items in the open session.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFROMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, November 1, is revised as follows:

Open Session

1. Summary Prior Approvals;
2. Farm Credit Administration Budget Fiscal Year 1990;
3. Task Force Report on Institution Mergers;
4. Section 433 Reassignments;
5. Effective Interest Rates Governed by Borrowers Rights Regulations;

[1] **Closed Session**

6. Examination and Enforcement Matters; and
7. Jackson FLB/FLBA, in Receivership.

Dated: November 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–26080 Filed 11–7–88; 3:15 pm]

BILLING CODE 6705–01–M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (6), (8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:47 a.m. on Wednesday, November 2, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) Assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; (2) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; (3) a personnel matter; and (4) the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(b)(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 7, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–26051 Filed 11–7–88; 2:40 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 15, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, November 17, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1987–31 (Reconsideration):
Terry L. Claassen on behalf of the Chicago Board Options Exchange, Inc.
Proposed Final Rules: 11 CFR 100.7(b)(8), 100.8(b)(9), 110.11(a)(1)(iv)(A), and 114.8(f).
Status of Regulations Projects
Status of Advisory Opinions
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88–26052 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

federal register

Wednesday
November 9, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

Unapproved Collections of Information; Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-88-1886; FR-2576]

Unapproved Collections of Information; Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice is intended to inform the public that: (1) Certain information collection requirements contained in administrative instructions issued by the Department on the prepayment of mortgages under Subtitle B, Title II of the Housing and Community Development Act of 1987, were not approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Consequently, pending OMB approval, property owners are not required to comply with these information collection requirements, and those owners who have already submitted such documentation as part of their Plans of Action may request its return; and (2) because the Department considers these requirements to be critical to its determination of prepayment eligibility under the 1987 Act, expedited OMB clearance of these information collection requirements has been requested. However, until such time as OMB approval of these requirements is obtained, the Department may not impose a penalty or deny a benefit to a property owner for failure to provide this information.

ADDRESS: Interested persons are invited to submit comments on the information collection requirements contained in this Notice to John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and to the HUD Rules Docket Clerk, Office of General Counsel, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the proposal by name.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 426–3944. [This is not a toll free number].

SUPPLEMENTARY INFORMATION: On April 5, 1988, the Department published an interim rule (53 FR 11224) setting forth the procedures governing the prepayment of a HUD-held or HUD-insured multifamily mortgage by an owner of eligible low income housing. The rule was precipitated by legislation contained in Title II, Subtitle B of the Housing and Community Development Act of 1987, Pub. L. 100–242, approved February 5, 1988 (1987 Act). The information collection requirements contained in this interim rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Subsequently, on May 20 and July 14, 1988, the Department issued administrative guidance pertaining to the requirement in the interim rule that an owner file a Notice of Intent to Prepay, and a Plan of Action. (These memoranda are published in their entirety in an Appendix to this Notice).

In order to assess whether a project owner's request for prepayment satisfies the requirements of the 1987 Act, the July 14, 1988 memorandum asked that owners seeking to prepay provide more information in the Plan of Action than had been requested in the interim rule (*see* Items 5 (a) and (b), and 7–10 of the July 14, 1988 memoranda). These additional requirements were not submitted to OMB for review and approval under the Paperwork Reduction Act, and consequently did not display an approved OMB control number.

In addition, the Department's May 20, 1988 memorandum included a sample form entitled, "Owner's Notice of Intent to Prepay." This form, although approved by OMB under the Paperwork Reduction Act, failed to display the approved OMB control number and expiration date.

On October 5, 1988, HUD representatives met with officials from OMB to discuss these unapproved information collection requirements. As a result of this meeting, the following actions were agreed to:

1. Property owners who have already submitted a Plan of Action for review under the 1987 prepayment legislation will be notified by HUD that, pending OMB approval, they are not required to submit information in response to items 5 (a) and (b) and 7–10 contained in the July 14, 1988 memorandum, and that they may withdraw such information if they choose to do so.

2. The Department is submitting to OMB under the Paperwork Reduction Act (44 U.S.C. Chapter 35) an expedited request for approval of the information collection requirements contained in the July 14, 1988 administrative instructions. Because of the statutory 60-day approval deadline for prepayments under the 1987 Act, OMB approval of these requirements has been requested within the next two weeks.

3. The public is advised that the public reporting burden for these collections of information is estimated to average 100 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This Notice lists the folllowing information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 27, 1988.

Samuel R. Pierce, Jr.,

Secretary.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Prepayment of a HUD-Insured Mortgage by an Owner of Low-Income Housing

Office: Housing

Description of the Need for the Information and Its Proposed Use: This information will enable the Department to make an adequate review, analysis and determination that a given Plan of Action for prepayment may be found acceptable i.e., that such Plan meets the standards required by the statute.

Form Number: None

Respondents: Businesses or other for-profit organizations

Frequency of Submission: One-time per project

Reporting Burden:

Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
120		1		100		12,000

Total Estimated Burden Hours: 12,000
Status: Revision
Contact: James J. Tahash, HUD, (202) 426-3944; John Allison, OMB, (202) 395-6880
Date: October 27, 1988.

Support Statement for Final Rule—Prepayment of a HUD-Insured Mortgage By An Owner of Low Income Housing

1. This final rule sets forth HUD's procedures governing the prepayment of an insured multifamily mortgage by an owner of low income housing. The rule gives regulatory effect to legislative provisions governing prepayment of HUD-insured mortgages that are contained in Title II of the Housing and Urban Development Act of 1987, entitled "Preservation of Low Income Housing." Congress enacted these provisions as an interim measure to assure that affordable multifamily housing units are preserved to the maximum extent practicable for lower-income families, and that displacement of such families is minimized, while the public and private sectors work together to find long term remedies to the potential loss of affordable housing.

The sections of this legislation governing prepayment, and the final rule will be replaced two years after the date of enactment of this legislation, but will have no effect on action taken or authorized prior to such repeal.

2. In enacting Title II, "Preservation of Low Income Housing," Congress made a number of findings leading to the conclusion that these interim measures are "needed to avoid the irreplaceable loss of low income housing and irrevocable displacement of current tenants." Congress has determined that in the next 15 years, more than 330,000 low income housing units insured under section 221(d)(3) and 236 of the National Housing Act could be lost as a result of the termination of low income affordability restrictions, and that in the next decade more than 465,000 low income housing units produced with assistance under Section 8 of the United States Housing Act of 1937 could be lost as a result of the expiration of the rental assistance contracts executed between project owners and HUD.

An owner of eligible low income housing, therefore, will no longer be able to prepay a mortgage unless the prepayment is first approved by HUD. HUD will only approve a prepayment in accordance with an acceptable plan of action submitted by the owner that discusses the impact of the proposed prepayment on the future use of the involved units and on the lower income tenants. If HUD determines that a mortgage cannot be prepaid, it can still agree to give the owner certain financial incentives to keep the mortgage in place, provided that the incentive is necessary to provide a fair return on the investment of the owner, is cost effective to the Federal Government, and meets statutory criteria designed to protect tenants.

If the project owner and HUD reach preliminary agreement on the terms of a plan of action, the owner will prepare a summary of these terms. Upon HUD's approval of the summary, the owner will send a copy of the summary to each tenant in the project, and will post a copy of the summary in each occupied building in the project. The summary will notify tenants that they have 30 calendar days to submit any comments to HUD who shall take such comments into account before giving final approval to the plan of action.

This new rule governing prepayments reflects provisions mandated by Congress and appears in a new part of the Code of Federal Regulations, 24 CFR Part 248.

3. Information is submitted on a project-by-project basis with no consideration being given to the use of improved information technology to reduce burdens. Further this information collection is not amenable to improved information technology because it is unique to the projects to which it applies. This final rule will largely reflect provisions mandated by statute and that frequently does not provide for agency discretion.

4. Each submission is unique to a particular project and, therefore, the possibility of duplication is almost nonexistent. In reviewing the regulation, however, we are assured that there are no unnecessary duplications therein.

5. Similar information that can be used or modified is not available.

6. Not applicable.

7. This legislation contains a provision for the repeal of this same section governing prepayment two years from the date of enactment of this legislation, at which time the final rule will also be repealed. Congress enacted these provisions as an interim measure to assure that affordable multifamily housing units are preserved to the maximum extent practicable for lower-income families, and that displacement of such families is minimized, while the public and private sectors work together to find long term responses to the potential loss of affordable housing. The final rule largely reflects provisions mandated by statute and that frequently does not provide for agency discretion.

8. There are no special circumstances requiring the collection of information that is inconsistent with the guidelines in 5 CFR 1320.6

9. The interim rule invited interested persons to submit comments on the procedures governing its implementation, and revised its final regulation based on the comments submitted. The Department evaluated the comments in an effort to assist Congress in ultimately establishing long term measures for assuring the existence of an adequate supply of affordable low-income housing units.

10. There are no assurances of confidentiality provided to the respondents. The information collected is not considered confidential.

11. There are no questions being asked that are of a sensitive nature.

12. Estimates of annualized cost to the Federal Government and respondents. It is estimated that it will cost the respondent and the government approximately $15.00 per hour including overhead and support staff.

	Total responses		Hours/response		Cost/hour		Annual cost
Respondents	120	×	100	×	$15	=	$180,000
Government	120	×	40	×	15	=	72,000
							252,000

13. It is further estimated that it will take each project owner 100 hours to complete all of its responsibilities for each project, and the Federal Government 40 hours to complete its responsibilities. The length of time

required for these functions is based on the experience of Field Office staff and of Headquarters staff who had previously worked in a Field Office.

The project owner will, in the 100 hours time period, file a Notice of Intent, prepare a Plan of Action that includes all of the information required by HUD to make an intelligent and valid evaluation, make necessary revisions to the Plan of Action, and negotiate with HUD regarding any possible incentives extended by HUD. The time and expense also includes notification to tenants when the project owner and HUD have reached preliminary agreement on the terms of the Plan of Action, and the cost and time necessary for duplication, mailing and posting of the summary of the agreement, as well as the cost and time involved in reviewing any comments received.

In addition to the information specifically required by the regulation; further information determined by the Commissioner to be necessary when making valid evaluations and determinations to meet the statutory test for prepayment have also been included as a requirement in the owner's Plan of Action. This information includes: 1. A protection plan to be provided by the owner for very low, low, and moderate income tenants when relocation is necessary (8 hours), 2. an independent market analysis or appraisal of the area providing the specific information requested in the Plan of Action (44 hours), 3. project operating statements (2 hours), 4. a description of any outstanding findings of noncompliance (2 hours), and 5. any other information enabling the owner to show that the criteria can be met (4 hours).

This additional 60 hours is included in the previously mentioned 100 hours necessary to complete all of the project owner's responsibilities for each project actually prepaid, or where there is an attempt to prepay.

The Department must review the Plan of Action for form and content, notify the project owner of any deficiencies in the Plan of Action along with recommendations to correct the deficiencies, be available to negotiate terms of any incentives with the owner, and provide incentives where appropriate.

14. This information collection is the result of the implementation of new statutory requirements. This information has not previously been collected in this format. While it is estimated that 297 projects will be eligible for prepayment by the end of 1989, the Department has determined that only 25 percent or 75 projects will actually prepay or attempt to prepay. Being cautious, however, this request for OMB approval indicates that 40 percent or 120 projects will prepay or attempt to prepay.

15. The information is not being collected for statistical use and will not be published.

PLAN OF ACTION—TABULATION OF ANNUAL REPORTING BURDEN PRESERVATION OF LOW-INCOME HOUSING—24 CFR PART 248

Description of information collection/Applicable program reference	Number of Respondents	x	Responses per Respondent	=	Total Annual Responses	x	Hours per response	=	Total Hours
A protection plan provided by the owner for very low, low and moderate income tenants:									
a. when relocation necessary	120		1		120		4		480
b. to maintain current rent structure	120		1		120		4		480
An independent market analysis or appraisal of the area providing the specific information requested in the Plan of Action	120		1		120		44		5280
Project operating statement	120		1		120		2		240
A description of outstanding findings of noncompliance	120		1		120		2		240
Any other information enabling the owner to show that the criteria can be met	120		1		120		4		480
							60		7200

May 20, 1988.

Memorandum for : All Regional Administrators; Directors of Regional Housing; Managers, Category A, B and C Offices; Directors, Housing Management Division; Loan Management and Assisted Housing Management Branch Chiefs; Valuation Branch Chiefs; and Area Economic and Market Analysts.

From: Thomas T. Demery, Assistant Secretary for Housing, H.

Subject: Prepayment of HUD-Insured Mortgage by an Owner of Low Income Housing.

A. Purpose

To provide guidance and direction addressing the criteria, procedures and time frames governing the prepayment of a multifamily mortgage by an owner of eligible low-income housing, in accordance with the provisions of the *Housing and Community Development Act of 1987*, and HUD's Interim Rule, *Prepayment of HUD-Insured Mortgage by an Owner of Low-Income Housing.*

B. Background

On February 5, 1988, The President signed the *Housing and Community Development Act of 1987.* Title II, Subtitle B of the Act, entitled: "Preservation of Low-Income Housing", provides that an owner of eligible low-income housing is precluded from prepaying the mortgage on such housing unless first approved by HUD. It further provides that HUD cannot approve a prepayment without an acceptable "plan of action", submitted by the owner, that dicusses the impact of such proposed prepayment on the future use of the involved housing units on lower income tenants. This legislation also contains a provision for the repeal of Subtitle B on February 5, 1990.

Congress enacted these provisions as an interim measure to establish criteria needed to avoid the irreplaceable loss of low-income housing and the irrevocable displacement of current tenants, while the public and private sectors work together to find long-term respones to the potential loss of affordable housing.

HUD published an Interim Rule on April 5, 1988, implementing the legislative provisions. The effective date for the rule is May 20, 1988. (*Exhibit 1*; 53 FR 11224).

C. Dates

Effective Date: May 20, 1988.

Expiration Date: Febraury 5, 1990, except for certain actions, as otherwise indicated herein.

D. Applicability

Eligible Low Income Housing—housing financed by a mortgage that is:

1. Insured or Held by the Commissioner under Part 221(d)(3) *and* assisted under Rent Supplement or Part 880, 881, or 886;

2. Insured or Held by the Commissioner under Part 221(d)(3) Below Market Interest Rate;

3. Insured, assisted, or Held by the Commissioner, under Part 236, and subject to a regulatory agreement;

4. A purchase money mortgage held by the Commissioner where, immediately prior to HUD's acquisition, would have been classified under paragraphs 1, 2, or 3 above;

and

Where, by regulation or contract in effect *before* such mortgage *is* or [within one year from the date of the owner's Notice of Intent to prepay] *would become eligible* for prepayment *without the prior approval of the Commissioner.*

At this time, HUD will not accept or process Notices of Intent or Plans of Action for projects which are not eligible to prepay by February 4, 1990.

E. Program Administration

General

HUD will approve prepayment of an eligible mortgage where the owner provides an acceptable "plan of action", and such plan is approved by HUD.

A mortgagee *cannot accept prepayment* without HUD's prior approval. To do so, is grounds for administrative action and legal remedies.

HUD may consult with and enter into agreements with local governments to implement Owners' plans of action and/or State strategies where such have been found acceptable and approved by HUD.

A sequence of steps and actions involved in the prepayment of a mortgage is set forth in the Prepayment Processing Flow Chart (*Exhibit 2).* Each of these steps is described in detail within this package, with instructions for the individual processes and time frames for completion.

Generally, HUD will attempt to make a final determination on a *plan of action* well in advance of the required 300 days from the time of completion, initial receipt.

If HUD determines that a mortgage cannot be prepaid, HUD may agree to certain financial incentives to keep the mortgage in place or to maintain long-term affordability restrictions, or a combination thereof.

F. Processing Procedures

Processing criteria, procedures, and time frames, are included herein and presented in individual packages, inclusive of form letters and notifications for easy and expeditious reference and application. These are identified and presented as follows:

Action	Reference
1. Notice of Intent to Prepay	Exhibit 3
2. Plan of Action	Exhibit 4[1]
Alternative State Strategy	Exhibit 5[1]
4. Incentives to Extend Low-Income Use.	Exhibit 6[1]

[1] These are not attached: they will be forthcoming under separate cover.

G. Approval Process

Approval of a *plan of action;* a *State strategy; incentives; modifications* to Regulatory Agreements or mortgages; and any *final agreements* implementing such, up to and including prepayment of a mortgage shall be made by HUD Headquarters.

Headquarters will approve and execute such final agreements based on the Field Office's packaged submission, which shall include by not necessarily be limited to:

1. Review and analyses;

2. Consultations between HUD program and technical disciplines, local governments, and other interested parties;

3. Sound and conclusive findings and supporting documentation from qualified, independent analyses, appraisals, etc.; and

4. Recommendations for approval/disapproval decision

H. Compliance

Important

These instructions are effective May 20, 1988. Upon receipt, Field Offices *must* immediately act to follow the procedures outlined, herein. All actions are time-critical, as mandated by statute.

Loan Management Branch Chiefs—immediately: Forward to all owners of eligible mortgages—Notice of Intent to Prepay Letter and Notice (see Exhibit 3)

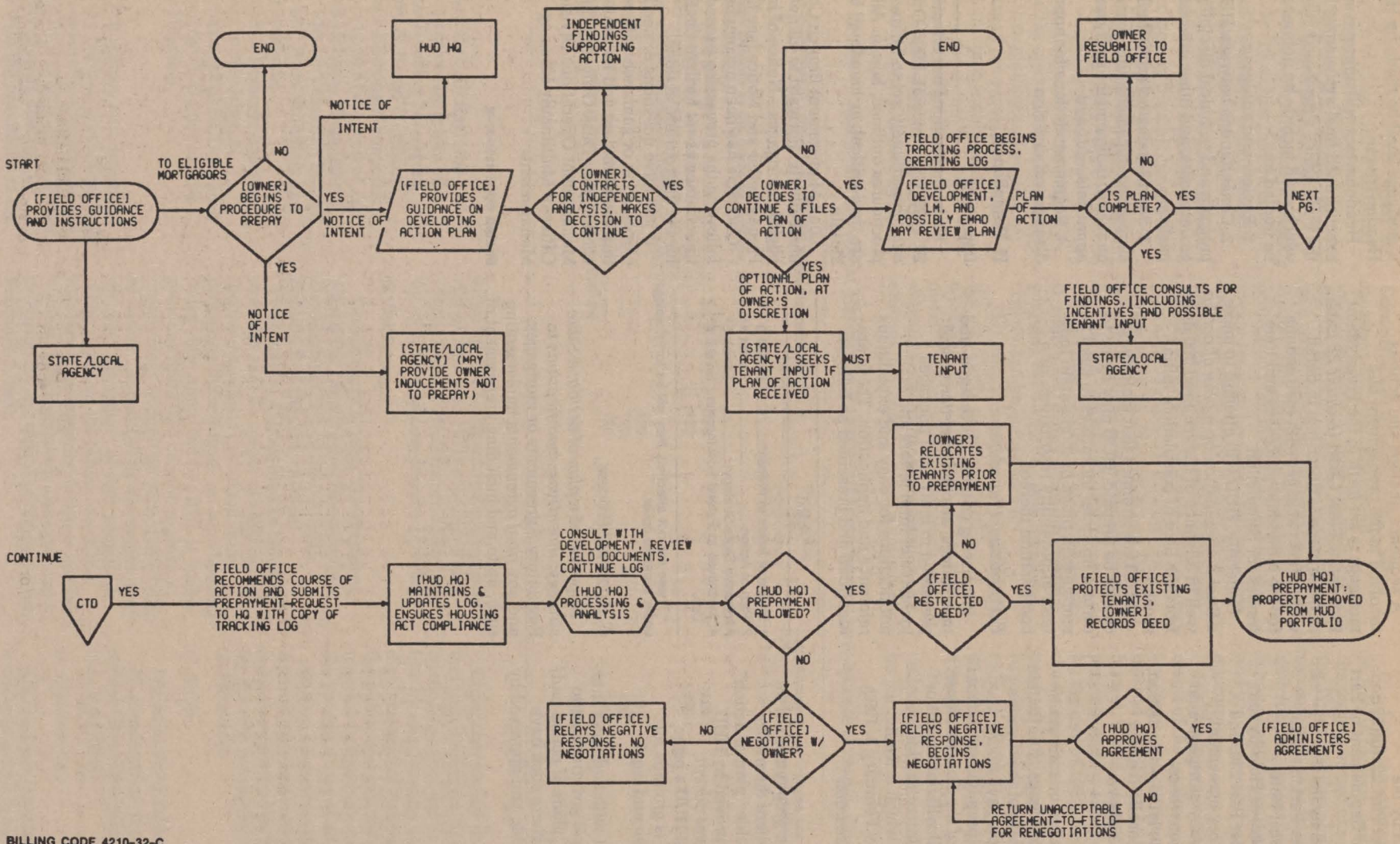
Once this has been accomplished, following the processing procedure and time frames as set forth in the Exhibits for the appropriate actions.

If you have questions or need further clarification or guidance with respect to this memorandum and its content, contact your Desk Officer in the Management Operations Division, Office of Multifamily Housing Management.

BILLING CODE 4210-32-M

Exhibit 2

PREPAYMENT PROCESSING UNDER THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987



BILLING CODE 4210-32-C

Exhibit 3—Notice of Intent to Prepay

Important—Loan Management Branch Chiefs:

The Rule is effective May 20, 1988. Owners have been aware that they can give Notice beginning on that date.

Notice and Guidance MUST be provided *immediately* to each owner of an eligible mortgage.

There are three (3) attachments to this Exhibit:

(1) Form Letter to Owners;

(2) Owners Intent to Prepay; and

(3) Eligible Projects list.

These have been provided for your use in giving guidance to owners and for receipt of a complete, uniform "Notice of Intent to Prepay" from owners.

The eligible projects list shows those projects which have been identified (by the Field Offices) as being eligible to prepay, by the Rule's definition.

A Letter is to be sent to each project owner on this list.

When you are in receipt of an Owner's *Notice of Intent to Prepay:*

(1) Review for completeness—(if not complete, return with explanation of required information);

(2) (if complete) go to next step—*Plan of Action, Exhibit 4.*

Note: If you should receive a Notice of Intent from an Owner involving a project that is not on the Eligible Projects Lists:

(1) review project file to determine eligibility status;

(2) confirm status with HUD Headquarters, Planning and Procedures Division, FTS 426–3944

(3) take action as directed by HUD Headquarters

May 20, 1988.

Re: Notice of Intent to Prepay.

Dear Owner: On February 5, 1988, the President signed the *Housing and Community Development Act of 1987.* Title II, Subtitle B of the Act, entitled: "Preservation of Low-Income Housing", provides that an owner of eligible low-income housing is precluded from prepaying the mortgage on such housing unless first approved by HUD. It further provides that HUD cannot approve a prepayment without an acceptable "plan of action", submitted by the owner, that discusses the impact of such proposed prepayment on the future use of the involved housing units on lower income tenants. This legislation also contains a provision for the repeal of Subtitle B on February 5, 1990.

Congress enacted these provisions as an interim measure to establish criteria needed to avoid the irreplaceable loss of low-income housing and the irrevocable displacement of current tenants, while the public and private sectors work together to find long-term responses to the potential loss of affordable housing.

HUD published an interim rule on April 5, 1988, implementing the legislative provisions. The rule provides that, upon the effective date, May 20, 1988, an owner of eligible low-income housing who wishes to prepay the mortgage or to change the terms of the mortgage or regulatory agreement shall file a "Notice of Intent".

This letter is to inform you of the requirements in the case that you should elect to seek prepayment or to negotiate changes to the mortgage or regulatory agreement.

The enclosed Notice of Intent has been developed for your use in providing Notice and the required information to HUD. Owners wishing to file must do so simultaneously to three places:

(1) *HUD Field Office* in jurisdiction where the project is located. Attention: Loan Management Branch Chief

(2) *HUD Headquarters*, U.S. Department of Housing and Urban Development, Office of Multifamily Housing Management. Attention: Operations Division, Room 6164, 451 7th Street, SW., Washington, DC 20410–8000

(3) *Appropriate State or local government agency* in jurisdiction where the project is located.

The Notice of Intent MUST provide the following information:

(1) Project Name, Number, and Location;

(2) Description of owner's plans for the project;

(3) Timetables or deadlines for actions to be taken;

(4) Reason(s) for prepayment, and/or Reasons(s) for change in terms of mortgage or regulatory agreement; and

(5) Description of any contacts with other government agencies or other interested parties in connection with the Notice of Intent.

If HUD receives your Notice of Intent, you will be sent a package of information needed to prepare a plan of action. This information will tell you what you will have to provide HUD and the standards and criteria regarding the approval of a plan of action which would result in prepayment of the mortgage and the termination of the low-income affordability restrictions.

Also included will be a list of various Federal incentives that HUD is authorized to negotiate for those projects where a plan of action involving termination of the low-income affordability restrictions would not be approvable.

Please be aware that HUD plans to approve any and all plans of action where owners meet the standards and criteria mandated by the statute. It is our sincere wish and pledge to you to work together to negotiate in a positive and cooperative effort so that our mutual needs and considerations are addressed and dealt with to the maximum extent practicable.

Sincerely,

Thomas T. Demery,

Assistant Secretary.

Intent to Prepay Mortgage

Important: This form should be completed in triplicate and submitted simultaneously to: (1) HUD Field Office, (2) HUD Headquarters, and (3) State and/or local agency(s).

Project name: _____
Project number: _____
Project address: _____

Plans for the project:
(Pursuant to § 248.211) _____

Timetables or deadlines for proposed actions: _____

Reason(s) for prepayment: _____
Reason(s) for changing mortgage

Terms/regulatory agreement: _____
Descriptions of contacts made or discussions which have been held with other government agencies or other interested parties in connection with this notice of intent?

Additional comments? _____

From:
Owner name: _____
Owner address: _____

Owner telephone: _____

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Room 3001 Office of Management and Budget, Washington, DC 20503.

July 14, 1988.

Memorandum For: All Regional Administrators; Directors of Regional Housing; Managers, Category A, B and C Offices; Directors, Housing Management Division; Loan Management and Assisted Housing Management Branch Chiefs; and Valuation Branch Chiefs

From: Thomas T. Demery, Assistant Secretary for Housing, H.

Subject: Prepayment of HUD-Insured Mortgage by an Owner of Low Income Housing—*Exhibit 4—Plan of Action.*

A. Purpose: To provide guidance and direction addressing the criteria, procedures and time frames governing the Owner's Plan of Action involving prepayment of a HUD-insured Mortgage by an Owner of Low Income Housing.

B. Background: On May 20, 1988, the Department issued guidance and direction pertaining to prepayment in general and specific, step-by-step procedures for an Owner's Notice of Intent to prepay a multifamily mortgage pursuant to Title II, subtitled B of the *Housing and Community Development Act of 1987*, and HUD's Interim Rule implementing these legislative provisions. You were also advised that further direction would be forthcoming, under separate cover, addressing other specific actions.

This transmits *Exhibit 4—Plan of Action* step-by-step standards and criteria, and time frames for an Owner's Plan of Action;

C. Compliance: Upon receipt of an Owner's Notice of Intent, Field Offices must act to follow the procedures outlined, herein. All actions are time-critical, as mandated by statute.

Note: Notice of Intent is first subject to review and process as outlined in the May 20, 1988 Exhibit 3-Notice of Intent to Prepay.

If you have questions or need further clarification or guidance with respect to this Exhibit and its content, contact Jim Tahash or Barbara Hunter in the Planning and Procedures Divisions, on FTS 426-3944.

Exhibit 4—Plan of Action

Important—Loan Management Branch Chiefs

These are the processing instructions for an Owner's Plan of Action. They have been written for Field Office use only.

There are three (3) attachments to this Exhibit:

(1) Form Letter to Owners (who have given Notice of Intent);

(2) Itemized Time Table; and

(3) Standards and Criteria for Approval Involving Termination of Affordability Restrictions.

The Form Letter to Owners and the *Standards and Criteria for Approval Involving Termination of Affordability Restrictions* have been developed for your use in providing Owners with the required information. Forward these once you receive a Notice of Intent to Prepay.

General

Upon the receipt of an Owner's Notice of Intent of Prepay, the Owner must be forwarded the information he/she will need to prepare a Plan of Action. The criteria and standards required to be addressed in the Plan of Action involve prepayment of a mortgage where the low-income affordability restrictions are terminated. However, in the case where HUD decides that a Plan of Action involving termination of the low-income affordability restrictions would not be approvable, HUD can offer incentives or consolations to extend the low-income use.

There are five (5) possible results from HUD's review and evaluation of a Plan of Action:

(1) Prepayment will be approved and all low income affordability restrictions will be terminated—except for the protection of the very low, low and moderate income tenants in-place;

(2) Prepayment will be approved, but owner will receive incentives to continue use of the project as low income housing;

(3) Prepayment will not be approved, but owner receives incentives to maintain the project as low and moderate income housing;

(4) Prepayment will not be approved, but failing to reach agreement (within 300 days) on a negotiated Plan of Action, HUD and the Owner will agree on a package of incentives and restrictions which would modify the regulatory agreement; or

(5) Prepayment will not be approved, and no incentives will be offered.

Any and all Plans of Action where an owner meets the standards and criteria mandated by statute *will* be approved. Plans of Action which propose prepayment and termination of affordability restrictions are to be analyzed and evaluated in accordance with the attached *Standards and Criteria for Approval Involving Termination of Low-Income Affordability Restrictions.*

Any Plans of Action not meeting these criteria may be considered for prepayment approval with restrictions; incentives for continuing the use as low and moderate income housing; etc., as listed above. Owner's must submit a Notice of Intent to prepay. HUD will not intertain a project that deals only with a request for incentives. Incentives will only be offered where the project has a higher and better use than low income housing and where the Owner has notified HUD of their Intent to Prepay. A Plan of action is required in *all* cases.

The Letter to Owners and Standards and Criteria have been developed for providing Owners with the required information and standards. This package is attached and is to be sent to an Owner who has submitted a *Notice of Intent to Prepay.*

Plan of Action

Once an Owner receives this package, he/she must prepare to meet and respond to its requirements. No further action is taken by the Field Office until An Owner submits the completed *Plan of Action. At that point,* and this is very important, the 300 day clock begins—and it is incumbent upon HUD to act and document its actions in as thorough and expedient a manner possible. This Exhibit explains the step-by-step processing and coordination between the Owner and HUD, and between the multiple factions and entities within HUD. It is very important to follow and track these processes with the highest commitment and diligence to product and time.

Processing Instructions

1. Receipt of Owners Notice of Intent to Prepay:

Loan Management Branch

(a) Forward to Owner:

(i) Letter to Owner; and

(ii) Plan of Action Standards and Criteria

Note: Insert your office address in space on Owner's Letter before forwarding to Owner.

(b) Owner starts preparation process.

2. Receipt of Owners Plan of Action and Creating the Tracking Process:

Loan Management Branch

(a) *Review:*

Review submission for completeness. All descriptions, analyses, certifications, etc. must be complete so that adequate evaluations, analyses, and findings can be made;

(b) *Return:*

[If not complete, or more information or clarification needed] return to Owner, requesting required information; or

(c) *Establish Tracking Record:*

[If complete, no additional information or clarification needed] start processing and tracking record by date and action.

Note: This review for completeness is for form and not substance, and should be accomplished ASAP but not longer than five (5) work days after receipt; ten (10) work days if written response to owner is necessary to request additional information or clarification.

Receipt of a complete Plan of Action starts the 300 day clock. This is the first action and date recorded and tracked. This tracking record will follow the process, up through a prepayment decision at HUD Headquarters, and will be an important part of the formal project docket. It is important to keep this record updated and current.

tracking all actions and action dates. Attached to these instructions is an itemized time table for the sequence of actions. The Loan Management Branch is the responsible point for coordinating, tracking, and recording all actions, maintaining such record, and the contact point with Headquarters.

(d) *Disseminate Plan:*

After this recording, individual review and analysis begins. Provide a copy of the Plan of Action now to the Valuation Branch, the Area Economic and Market Analyst, and the FH&EO Division for their independent review and analysis, simultaneously with the Loan Management Branch. Provide this through written transmission establishing and indicating response time frames, leaving Loan Managment Branch time to incorporate and consolidate the various reviews, as appropriate.

Note: This analysis if a *priority* work product. The Field Office has 60 days from receipt of the Owner's (complete) Plan to review, identify any deficiencies, and obtain directive from Headquarters and alert Owner, in writing, of the deficiencies *and* how Owner could revise the Plan to meet the criteria for approval.

3. Review and Analyses of the Plan of Action:

Note: HUD will approve a Plan of Action and Prepayment where Owners meet the standards and criteria mandated by the statute, and as soon as possible.

Loan Management Branch/Valuation Branch/FH&EO Division/Area Economic and Market Analyst

(a) Analyze and verify contents of the Plan of Action. Confer and coordinate, as appropriate, to accord full analytic evaluation of the Plan and to produce sound findings. The Standards and Criteria, attached, are to be used to review and analyze the Owner's Plan of Action and to make findings and recommendations regarding the Owner's submission.

(b) Make findings.

Field Office evaluation and findings should substantiate either:

(1) Owner's Plan of Action meets the standards and criteria for prepayment and termination of all affordability restrictions (except protection of in-place tenants), and does not need any revision, additional information, or additional analysis—

In this case, skip to Section 6. *Notification Procedures* and follow directions.

or

(2) Owner's Plan of Action does not meet the standards and criteria but could if the Owner modified the Plan—

In this case, the Field Offices will work with the Owner to assist in getting information and developing a plan which can be approved. Refer to Section 4 *Notification of Deficiencies* and follow directions.

or

(3) Owner's Plan of Action does not meet the standards and criteria and Owner cannot or does not want to make the necessary revisions, but, instead, to negotiate for incentives—

In this case, skip to Section 6. *Notification Procedures* and follow directions:

Note: Incentives will only be offered if the property has a higher and better use, as determined and shown in the Plan of Action.

(c) Findings of deficiencies. The finding of any deficiencies of the Plan which would prevent the Plan from being approved MUST be sound, supported with justifications and recommendations or suggestions which will allow Headquarters to make an expedient and proficient review and decision. Where there are no conflicting findings but such findings and recommendations cross program offices, the Loan Management Branch will be responsible for consolidating the findings into one composite package and preparing and submitting to Headquarters.

Where findings and/or recommendations to make the Plan approvable conflict or disagree:

- If dissenting viewpoint or opinion between Loan Management Branch and Valuation Branch—the Area Manager will be the final Field Office decision point.
- If dissenting viewpoint or opinion from either FH&EO or Economic and Market Analyst, (where Loan Management and Valuation Branch do not agree or support) the FH&EO and/or Economic and Market Analyst dissenting opinion is to be included in the submission to Headquarters with rationale from Valuation and/or Loan Management for disagreement.

4. Notification of Deficiences.

The Notification, as it would be prepared to be sent to Owner, will be forwarded to the Office of Multifamily Housing Management, Headquarters, by the Field Office, as follows:

(a) Identify Deficiences and Recommendations: Loan Management Branch Chief:

(1) Coordinate and consolidate all reviews, responses and recommendations for suggested revisions;

(2) Prepare Notification Letter;

(3) Alert Desk Officer telephonically, in Operations Division (Headquarters) of deficiencies and forthcoming facsimile;

(4) Transmit facsimile of Notification Letter to Headquarters, Office of Multifamily Housing Management, Operations Division.

Note: Fax must be sent ASAP but NLT 45 days after receipt of Owners Plan.

(b) Obtain Headquarters' Response: Headquarters will respond to the Field Office as follows:

(1) Desk Officer in Operations Division (Headquarters) will telephone response to Loan Management Branch;

(2) Written Approval/Disapproval of Notification and its contents will be directed to Loan Management Branch Chief via facsimile.

(c) Notify Owner:

Loan Management Branch Chief

Notify Owner, in writing, of any deficiencies/revisions (as approved by Headquarters).

Note: Notification must be given to Owner NLT 60 days after receipt of Owner's Plan of Action.

Deficiency(s) Notice will contain:

(1) Description of any deficiencies which prevent the Plan of Action from being approved;

(2) Description of how the Plan could be revised to meet the criteria for approval; and

(3) Provision that Owner should be in contact to negotiate time frame for any revision—that time clock for approval is halted with this Notice until further response is received.

5. Revisions to Owner's Plan of Action: Based on the Notification of Deficiencies, the Owner may revise the Plan of Action. This is necessary before HUD can approve or disapprove the Plan.

The Field Office and the Owner should keep in close contact during this period of time to ascertain the direction the Owner may wish to take and what alternatives are available.

There is no limit on the number of times that a Plan may be revised; however, it will, necessarily, affect the time frame for an approval decision, accordingly.

Loan Management Branch

Upon receipt of a revised Plan of Action, follow the procedure as outlined under 2. through 4. above, in the same repeat manner.

Be sure to indicate all actions and dates on your processing log.

6. Notifiation Procedure:

Note: NLT 180 days after receipt of Owner's Plan of Action [longer if Owner requests and/or revisions to Plan were necessary], owner will be notified whether Plan is approved.

Loan Management Branch

(1) Forward to Headquarters, Attention: Director, Operations Division:

(i) The Plan of Action;

(ii) Field Office Analysis, supporting statements, professional analyses, appraisals, etc.; and

(iii) Field Office findings, suggestions, recommendations.

If disapproval is recommended, based on findings and evaluations, Field Office will:

(i) Explain and describe reasons; and

(ii) Describe actions that could be taken to meet the criteria for approval;

Forward these ASAP but NLT 150 days after receipt of Owners Plan. (Longer if actions necessitated return to Owner for additional work or revisions). Headquarters will review recommendations and respond to Field Office with decision for approval or disapproval, etc.

(2) Obtain Headquarters Approval/ Disapproval.

(3) Forward Approval/Disapproval to Owner.

All executions and final agreements will be made at the Headquarters level. Headquarters may instruct Field Office to negotiate with Owners, with appropriate guidance, on a case-by-case basis.

ITEMIZED TIME TABLE

Action	Start	Finish
Recording and Tracking Log.	With receipt of complete Plan of Action from Owner.	Continues through final approval/ disapproval action and response back to Owner.
Notification of Deficiencies:		
—to Headquarters.	ASAP, But	NLT 45 days after receipt of Plan (each time).
—to Owner.....	ASAP, But	NLT 60 days after receipt of Plan (each time).
Revisions to Plan (as required by HUD or Owner).	This time required for revisions to Plan is negotiated with Owner, BUT understand until such revised Plan is re-submitted to HUD, the clock stops (each time).	

ITEMIZED TIME TABLE—Continued

Action	Start	Finish
Notification of Approval/ Disapproval:		
—findings and recommendations to Headquarters.	ASAP, But	NLT 150 days after receipt of Plan (or longer as required/ requested, as in revisions, above).
—findings and Approval/ Disapproval to Owner.	ASAP, But	NLT 180 days after receipt of Plan (or longer as required/ requested, as in revisions, above).

Note: Create log for recording and tracking processing actions and time frames. This is an important process and one which will become part of the formal "decision" package. It is important that HUD conduct all actions within the time frames established by the statute.

Dear Owner:

Re: Owners Plan of Action—Information For Preparation And Submission.

Pursuant to your Notice of Intent to Prepay, this will provide further guidance and information that HUD requires to evaluate your proposed Plan of Action.

Preparation and Submission. An original and 3 copies of your Plan of Action is required to be submitted to your local HUD Field Office as follows:

U.S. Department of Housing and Urban Development

Attention: Loan Management Branch Chief

You may also submit the Plan of Action simultaneously to the appropriate State or local government. If you do, please be advised that it is incumbent upon such State or local government to consult with representatives of the tenants of the housing in its review of the Plan of Action.

Contents. Your Plan of Action must include certain descriptions, data, and information to meet statutory and regulatory mandates and to help facilitate HUD's review and approval of an acceptable Plan.

Based on the contents of your Plan, HUD will make a finding(s) that certain conditions are met, agreements made, and situations are considered, evaluated and sufficient in meeting the standards and criteria for prepayment.

The standards and criteria HUD will use to evaluate particular findings for the approval of a prepayment involving termination of all low-income affordability restrictions are enclosed.

In addition, included is a list of various Federal incentives that HUD is authorized to negotiate for those projects where (1) the Owner's Plan of Action involving termination of the low-income affordability restrictions would not be approvable, or (2) the Owner wishes to reconsider prepayment, involving termination, for incentives to maintain the low income nature of the project. Such incentives will be offered only if (a) the property has a higher and better use, as determined and shown in the Plan of Action, and (b) low-income affordability restrictions are locked-in for the remaining term of the mortgage.

HUD will approve any and all Plans of Action where an Owner meets the criteria and, where all standards and criteria cannot be met, to negotiate in good faith efforts to accommodate our mutual needs and considerations.

I look forward to working with you in a positive and creative partnership to meet the challenges addressing today's housing issues.

Sincerely,

Thomas T. Demery,

Assistant Secretary.

Plan of Action

Standards and Criteria

A. *Contents:* The Plan of Action must include:

(1) Descriptions of proposed changes in the status or terms of the mortgage or the regulatory agreement which may include a request for incentives to extend the low income use of the housing;

(2) Description of any assistance that could be provided by State or local government agencies, as determined by prior consultation between the owner and the agencies;

(3) Description of any proposed changes in the low-income affordability restrictions;

(4) Description of any proposed change in ownership related to the Plan of Action or prepayment;

(5) An assessment of the effect of the proposed changes on existing tenants, i.e., rent increases, relocation, etc.

If an Owner plans to prepay, the Owner must protect the existing very low, low, and moderate income tenants [in-place] by either:

(a) relocating all such tenants to comparable and affordable replacement housing with similar rent structures within the housing market area; or

(b) protecting the low-income affordability of all such tenants by maintaining their current rent structures, as determined by the program economic criteria, for as long as such tenant(s) qualifies under such economic criteria.

The Plan of Action must, therefore, describe the type of protection the Owner plans to provide the tenants, how he/she plans to go about it, where the replacement housing would be, contracts, agreements, etc.

(6) A statement of the effect of the proposed changes on the supply of housing affordable to low and very low-income families in the community within

which the housing is located and in the housing market area that the housing could reasonably be expected to serve, i.e., percentage of assisted housing the project represents to the total assisted housing in the market area and/or percentage of housing stock of similar rental structure this housing represents in the market area.

(7) An independent market analysis or appraisal, providing unsubsidized market information sufficient in scope to allow HUD to determine market rents and value and market needs in the area for both market and below market tenants and equity of property. Such appraisal shall include, as a minimum, the following:

(a) Project identification and information [Complete attached Form HUD-92013, page 1.];

(b) A map showing the location of the project and accompanying demographic data, including:

- Racial composition of the census tract in which project is located;
- Income composition of the census tract in which project is located;
- Employment and employment opportunities in the neighborhood, community and market area,
- Neighborhood condition and characteristics, including type (residential, commercial, industrial, etc.);

(c) Description of the current condition in the overall market for *unassisted rental housing* in the community and the market area, including:

- Types of other rental housing available;
- Description and number of units and current vacancy rates;
- Size and description of waiting lists; and
- Description of comparable rents;

(d) Description of the current condition of *assisted rental housing* in the community and the market area, including:

- Description and number of units and current vacancy rates (Section 8, Public Housing, etc.);
- Size and description of waiting list; and
- Description of comparable rents.

(e) Description and data of project tenancy, including:

- Race/ethnicity and gender of household head composition of the project, as of the date of the prepayment request;
- Designation of the project (elderly or nonelderly);
- Income composition of project tenants as of the date of the prepayment request broken down as follows:

Very low (50% or below of median)
Low (50/80% of median)
Moderate (80/90% of median)
Market (95% or above median)

- Place/location of employment of project tenants;
- Occupancy rate of the project *as of January 1, 1987*, broken down as follows:

Very low (50% or below of median)
Low (50/80% of median)
Moderate (80/90% of median)
Market (95% or above median)

- Rent roll, unit-by-unit (Complete Format attached)

(f) Description and physical condition of the Property;

(g) Description and financial condition of the Property:

- Existing First Mortgage Information

—Mortgage Balance
—Interest Rate
—Monthly Mortgage Payments to Principal and Interest
—Monthly Payment to MIP
—Maturity date of the Mortgage

- Existing second mortgages, subsidy, Flexible Subsidy, Grants, or financial loans/contracts or other financial liens/encumbrances—

—Outstanding Balance(s)
—Interest Rate(s)
—Monthly Payments to Principal and Interest
—Maturity or Expiration date of loan/grant/contract term

(h) The estimated fair market value, based on the project being maintained as residential rental housing, as of the date of the prepayment request.

(i) The estimated fair market value, based on the property's highest and best use.

Important.—The independent analysis or appraisal incorporating the information requested under 7) above, is to be conducted and provided by an independent, qualified professional, recognized by the real estate appraisal industry. It is to be included in the Owner's Plan of Action, but packaged separately and discreetly from the other requested contents, and signed, certified and dated by the Appraiser.

The Owner should also make the Appraiser aware that, in the case of litigation involving the information contained in the market analysis or appraisal, the Appraiser may be called upon as an expert witness on behalf of the Department in any such litigation or court action emanating from any of the information supplied in the market analysis/appraisal.

The cost of the appraisal will be approved by HUD as a project expense if the ultimate result of the Plan of Action extends the low-income character of the project for the remaining term of the mortgage.

(8) Copies of Project Operating Statements (Forms HUD-92410) for last three (3) years;

(9) Description of any outstanding findings of noncompliance with Title VIII of the Civil Rights Act of 1968; Title VI of the Civil Rights Acts of 1964; Executive Order 11063; or with respect to the project Regulatory Agreement.

(1) Any other information which would enable the Owner to show and demonstrate that the legislatively mandated criteria can be met.

B. Approval of a Plan of Action that involves termination of low-income affordability restrictions:

Based on the content of the Plan of Action, HUD must make findings that certain conditions and situations are considered and evaluated. A Plan of Action involving termination of low-income affordability restrictions must meet the following tests before prepayment can be approved:

(a) Implementation of the Plan of Action will not materially increase economic hardship for current very low-income, low-income and moderate income tenants or involuntarily displace current very low-income, low-income and moderate income tenants (except for good cause) where comparable and affordable housing is not readily available. The owner will agree to execute and allow the recordation of use agreements to safeguard current tenants against such adverse effects. The Plan of Action generally will not be considered materially to increase economic hardship for current tenants if:

(1) In the case of a project that is to be converted to cooperative or condominium ownership, very low-income, low-income and moderate income tenants who are unable or unwilling to purchase cooperative shares or condominium units:

- Are provided relocation assistance sufficient to secure adequate, comparable replacement housing at rentals not exceeding the levels set forth in paragraph (a)(2) of this section, or
- Are allowed to remain as tenants, paying rents not exceeding such levels; and

(2) In the case of a project which will continue as rental housing, the Commissioner determines that comparable and affordable replacement housing is available in the community and that tenants will be provided reasonable relocation assistance.

If the Commissioner determines that comparable and affordable replacement housing is not available, a material increase in economic hardship will not occur when rent contributions for

current tenants do not exceed the following percentages:

- 30 percent of 50 percent of median areas income, adjusted by family size, for tenants who are very low income tenants at the time of the increase,
- 30 percent of 80 percent of median area income, adjusted by family size, by tenants who are low income tenants at the time of the increase, and
- 30 percent of 95 percent of median area income, adjusted by family size, for tenants who are moderate income tenants at the time of the increase.

The Commissioner may require that increases in rents for some or all of the such current tenants (except for increases made necessary by increased operating costs) allowed under this paragraph be phased in gradually; and

(b)(1) The supply of vacant, comparable housing is sufficient to ensure that the prepayment will not materially affect;

(i) The availability of decent, safe and sanitary housing affordable to low-income and very low-income families in the area that the housing could reasonably be expected to serve;

(ii) The ability of lower income and very low-income families to find decent, safe and sanitary housing near employment opportunities; or

(iii) The housing opportunities of minorities in the community within which the housing is located; or

(2) The Plan of Action has been approved by the appropriate State agency and any appropriate local government agency for the jurisdiction in which the housing is located as being in accordance with a State strategy approved by the Commissioner.

It is incumbent upon the Owner to prepare the Plan of Action in such manner as to show and demonstrate that these findings are met.

C. Plan of Action involving prepayment with Restrictions:

Plans of Action not meeting the standards and findings under B., involving termination of low-income affordability restrictions, may be considered for prepayment with restrictions. Each such Plan will be evaluated on its own merits and on a case-by-case basis, through negotiations between the Owner and HUD.

An example of such a situation might be where, through restrictive, binding agreements, such housing would be maintained as housing for the very low-income, low-income, and moderate income tenants for a designated time into the future, notwithstanding a prepayment of the current, existing mortgage. In this case, all low-income affordability restrictions would not be terminated, tenants (current and future) would be protected, and such a prepayment would not materially affect the supply of decent, safe and sanitary housing available to such tenants.

Plans of Actions involving prepayment with restrictions shall clearly and definitively describe and demonstrate the manner and wherewithall to accommodate the legislative mandates, i.e., conventional financing, State or local agency financial intervention, the Low-income Tax Credit Program, etc.

Use Restrictions would be set forth in a document that would (1) be recorded in the appropriate land records, (2) have priority over all mortgage liens, and (3) be enforceable by HUD [and existing and, if applicable, potential tenants].

D. Incentives to Extend Low-Income Use:

Where Plans of Action providing for prepayment of the mortgage cannot be approved, or where an Owner might be induced to extend the low-income use of the project, (within certain market areas) HUD may agree to provide one or more Federal incentives, if such incentive(s) are determined to be warranted in order to achieve the purposes of the legislation.

Note: such incentives will be offered only if (a) the property has a higher and better use, as determined and shown in the Plan of Action, and (b) low-income affordability restrictions are locked-in for the remaining term of the mortgage.

Incentives to Extend Low-Income Use, the specific incentives available, and individual procedures and step-by-step instructions for processing, are covered and detailed in Exhibit 6, published under separate cover. The incentives and the probable order in which HUD will consider such incentives are briefly set forth here, as follows:

(1) Increased access to residual receipts funds; For those projects in good physical condition, HUD will consider releasing all or a portion of the projects residual receipts funds.

Access to the Reserve for Replacement funds will not be entertained as a possible inducement given that the General Accounting Office, the Office of Inspector General and HUD audits and reviews all have consistently found that the Reserve for Replacement funds do not have excessive balances to cover project needs.

(2) Revisions to the method of calculating equity: HUD may consider revising the method of calculating equity based on the new appraised value as residential rental housing, minus the total outstanding financial debt and encumbrances, to arrive at a new equity based on which the six percent rate of return on equity is applied.

(3) Provision of insurance for an equity loan, HUD may approve and insure an Equity Loan under section 241(f). The Owner would be required to seek out a mortgagee to submit an application for processing, and such processing and loan approval would be carried out in a pro forma manner.

(4) Provision of Flexible Subsidy assistance; To provide financial assistance under the Flexible Subsidy Program in order to cure financial difficulties and/or to fund deferred maintenance needs or the provision of capital improvements for the project.

Though the legislative and regulation provisions covering prepayment include capital improvement loans as a possible incentive, the Department does not plan to implement the Capital Improvements Loan Program at this time. However, the need for capital improvements can be met through the Flexible Subsidy Program as stated above.

(5) An increase in the allowable distributions, or other measures to increase the rate of return; Increasing the allowable distribution by increasing the current six percent rate to some higher agreed upon amount.

(6) An increase in the rents permitted under an existing Section 8 Contract.

Section 8, in and of itself, is not a real inducement not to prepay, but a funding mechanism to make it possible for the Owner to collect rents from those tenants whose 30 percent of income would not meet the approved rent. Therefore, on a case-by-case basis, subject to Appropriations Act funding, the Department would consider providing some form of Section 8 assistance for those particular tenants.

E. Submission of the Plan of Action:

The Plan of Action should be submitted to HUD only upon completion of all required information. It should meet the requirements in such a manner as to show and demonstrate, as thoroughly and accurately as possible, how the legislative and regulatory mandates are met. Any and all portions of the plan involving participation or involvement by third parties shall be endorsed, certified or otherwise verified or signed, as appropriate. Specifically, the market analysis or appraisal must be signed and dated by a recognized Appraiser.

Finally, the completed package must be dated and signed by the Project Owner of Record (General Partner) and submitted in triplicate to the HUD Office in the jurisdiction of the subject housing project.

For Each Project Where Project Owner Submits a Plan of Action

(1) Complete the following sections of the front page of Form HUD–92013, attached:

(a) Section A, all
(b) Section C, all
(c) Section D, blocks 7 through 12
(d) Section E, all
(e) Section F, all (including F–1)

(2) Complete Information for Project Rent Roll, unit-by-unit, Format attached. (Two separate forms)

(3) Submit completed Form HUD–92013 and Rent Roll Formats with, and as part of, The Plan of Action.

BILLING CODE 4210–32–M

OMB No. 2502-0029 (Exp. 10-31-87)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING-FEDERAL HOUSING COMMISSIONER

APPLICATION FOR MULTIFAMILY HOUSING PROJECT

SECTION A - PROJECT IDENTIFICATION

1. Name of Project	2. HUD Project Number *(Mortgage Ins. or Sec. 202)*
	3. HUD Project Number *(Section 8)*

SECTION B - PURPOSE OF APPLICATION

TO: The Assistant Secretary for Housing-Federal Housing Commissioner: Application is being made pursuant to Item (a): ☐1, ☐2, ☐3 of Section M, Page 3 hereof. The undersigned desire(s) to participate, with respect to the Property and Program(s) described below. Therefore, it is requested that you give consideration to the information presented herein, for the purpose of loaning and/or approving:

☐ Mortgage Insurance: Section; _____
☐ a Feasibility Letter *(Rehab.)* ☐ Direct Loan Section 202
☐ a SAMA Letter *(New Const.)* ☐ Housing Asst. Pymnts. Sec. 8
☐ a Conditional Commitment ☐ a Preliminary Proposal
☐ a Firm Commitment ☐ a Final Proposal

Mortgagor: ☐ PM ☐ NP ☐ LD ☐ B-S Other _____
Financing: ☐ Conventional ☐ GNMA ☐ Bond ☐ State Agency
Other _____
Mortgage/Loan Amount: $ _____
Interest Rate: Permanent _____ % Construction _____ %

SECTION C - LOCATION AND DESCRIPTION OF PROPERTY

1. Street Address	2. Municipality	3. County	4. State and ZIP Code	5. Congressional Dist.

6. Type of Project: ☐ Proposed ☐ Rehabilitation ☐ Existing Year Built: 19	7. Number of Units: Revenue: _____ Non-Revenue: _____ TOTAL: _____	8. No. of Buildings	9. List Accessory Buildings Area / Sq. Ft.	10. List Recreation Facilities Area / Sq. Ft.

11. Type of Buildings: ☐ Elevator ☐ Walkup ☐ Row (T.H.) ☐ Detached ☐ Semi-Detached	12. No. of Stories	13. No. of Elevators	14. Type of Foundation: ☐ Slab on Grade ☐ Crawl Space ☐ Partial Bsmt. ☐ Full Basement

15. Structural System	16. Floor System	17. Exterior Finish	18. Heating System	19. Air Conditioning System

SECTION D - INFORMATION CONCERNING LAND OR PROPERTY

1. Date ☐ Acquired ☐ Optioned / /	2. Price ☐ Purchase ☐ Option $	3. Additional Cost Paid or Accrued $	4. Total Cost $	5. Outstanding Balance $	6. Relationship Between Seller and Buyer, Business, Personal or Other

7. Site Area Sq. Ft.	8. Zoning *(If recently changed, submit evidence)*	9. If leasehold show annual ground rent $	lease term, remaining years . . . .

10. Off-Site Facilities:	Public	Comm.	At Site	Feet from Site	11. Unusual Site Features		12. Special Assessments
Water	☐	☐	☐	_____ ft.	☐ None	☐ Poor Drainage	a. ☐ Prepayable ☐ Non-prepayable
Sewer	☐	☐	☐	_____ ft.	☐ Cuts	☐ Retaining Walls	b. Principal Balance $ _____
Paving	☐	☐	☐	_____ ft.	☐ Fill	☐ Rock Foundations	c. Annual Payment $ _____
Gas	☐	☐	☐	_____ ft.	☐ Erosion	☐ High Water Table	d. Remaining Terms _____ years.
Electrical	☐	☐	☐	_____ ft.	☐ Other _____		

SECTION E - ESTIMATE OF INCOME

Unit Type	No. of Living Units	No. of Units Assisted	Living Area *(Sq. Ft.)*	Composition of Units	PBE Not in Rent ($) * *(Sec. F-1)*	Unit Rent per Mo. ($)	Total Monthly Unit Rent ($)
Employee(s) Liv. Units(s)							
TOTALS				2. TOTAL ESTIMATED MONTHLY RENTALS FOR ALL LIVING UNITS $			

3. Number of Parking Spaces
☐ Attended
☐ Self Park
Total Spaces

4. Parking and Other Income *(Not Included in Rent)*
Open Spaces _____ @ $ _____ per month = $ _____
Covered Spaces _____ @ $ _____ per month = $ _____
Laundry _____ Sq. Ft. or Living Units @ _____ per month = $ _____
Other _____ per month = $ _____
TOTAL ANCILLARY INCOME $

5. Commercial Space *(Describe)*
Area-Ground Level _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Other Levels _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
TOTAL COMMERCIAL $

6. TOTAL ESTIMATED MONTHLY GROSS INCOME AT 100 PERCENT OCCUPANCY $

7. TOTAL ANNUAL RENT *(Item 6 times 12 months)* $

8. Gross Floor Area: Sq. Ft.	9. Net Rentable Residential Area: Sq. Ft.	10. Net Rentable Commercial Area: Sq. Ft.

SECTION F - EQUIPMENT AND SERVICES *(Check Items Included in the Rent, Listed Below)*

Equipment:
☐ Range and Oven ☐ Carpet
☐ Microwave Oven ☐ Drapes
☐ Refrigerator ☐ Swimming Pool
☐ Laundry Facilities ☐ Air Conditioning Equip.
☐ In Common Area ☐ Trash Compactor
☐ In Living Unit ☐ Disposal
☐ L.U. Hookup Only ☐ Other

Services: Gas / Elect. / Oil
☐ Heat ☐ ☐ ☐
☐ Hot Water ☐ ☐
☐ Cooking ☐ ☐
☐ Air Conditioning ☐ ☐
☐ Lights, etc., in Units
☐ Cold Water ☐ Parking
☐ Other

SECTION F-1 - UTILITIES *(Not in Rent)*

* PERSONAL BENEFIT EXPENSES *(PBE)*:
Check Utilities and Services Not Included in the Rent and Paid Directly by the Tenant.
☐ Electricity ☐ Heating ☐ Gas
☐ Decorating ☐ Repairs ☐ Water
Other
Remarks

Previous Editions Are Obsolete

HUD 92013 (3-85)
HB 4571.1

BILLING CODE 4210-32-C

RENT ROLL FORMAT—Information on Tenant Income and Rent on hand at the Project as of Date of Appraisal

A	B	C	D	E	F	G	H	I	J	K	L	M
Project Name: Project Number: Unit No..	Tenant Name.	Unit Type...	Tenant Adj. Income.	Base Rent.	Personal Benefit Expense.	Total Rent.	LMSA Section 8.	Total Rent Actually.	30 Percent of Adjusted Income.	Existing FMR.	Market Rent by Comparison.	Lowest Of Cols. I,J,K,L.

RENT ROLL FORMAT—Information on Tenant Income and Rent on hand at the Project on January 1, 1987

A	B	C	D	E	F	G	H	I	J	K	L	M
Project Name: Project Number: Unit No..	Tenant Name.	Unit Type...	Tenant Adj. Income.	Base Rent.	Personal Benefit Expense.	Total Rent.	LMSA Section 8.	Total Rent Actually.	30 Percent of Adjusted Income.	Existing FMR.	Market Rent by Comparison.	Lowest Of Cols. I,J,K,L.

[FR Doc. 88-25425 Filed 11-8-88; 8:45 am]
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federal register

Wednesday
November 9, 1988

Part III

The President

Digest of Public General Bills

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Vol. 53, No. 217
Wednesday, November 9, 1988

Presidential Documents

Title 3—

The President

Proclamation 5903 of November 6, 1988

National Hospice Month, 1988

By the President of the United States of America

A Proclamation

Hospice care helps terminally ill people cope physically and emotionally with illness and helps their families cope with grief. To achieve these goals, hospices offer an intimate approach for both patient and family that encompasses medical care, relief from pain, and encouragement to continue in loving family relationships. Observance of National Hospice Month, 1988, provides Americans with the chance to learn more about hospice care and its purposes.

Hospices offer compassionate, planned care by interdisciplinary teams of doctors, nurses, therapists, home health aides, homemakers, volunteers, social workers, and pastoral and other counselors. All of these people see to the varied needs of patients and families. At present, small hospices, staffed largely by volunteers, are supplying much of the care to those in need, often without charge. But hospice care is increasingly a part of health care in America. Medicare has begun certifying hospices; Medicaid programs will provide hospice care; and many private insurance companies already offer hospice benefits.

During this special month of observance and in the future, we can all be aware that hospices make it possible for terminally ill people to have a natural death in the comforting knowledge that their loved ones will not face their loss unprepared or alone. We can be grateful for the reverence thus shown for the sanctity of life and human dignity.

The Congress, by Public Law 100–405, has designated November 1988 as "National Hospice Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 1988 as National Hospice Month. I urge all government agencies, the health care community, appropriate private organizations, and the people of the United States to observe the month of November with appropriate programs and activities to recognize and support hospice care.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88–26166
Filed 11–8–88; 11:17 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 5904 of November 6, 1988

National Women Veterans Recognition Week, 1988

By the President of the United States of America

A Proclamation

Throughout our history, women have been among the patriots who have defended our land and liberty from every enemy. Many women have served in the military, in occupations from pilot to nurse and in both peacetime and war. We owe all of them a special debt of gratitude for their part in advancing the promise of freedom. We do well to recall that we owe appreciation to our many veterans of military service who are women.

Today, the number of women serving in the military, and thus the number of women veterans, continues to grow; women veterans now comprise 4.4 percent of the total veteran population. They continue to enrich our country in civilian life as they bring their skills and patriotism to bear in communities across America. Let us use the welcome occasion of National Women Veterans Recognition Week, 1988, to honor the service, sacrifice, and love of country so gladly given by our women veterans.

To create greater public awareness and recognition of the many achievements of women veterans, the Congress, by Public Law 100–514, has designated the week of November 6 through November 12, 1988, as "National Women Veterans Recognition Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 6 through November 12, 1988, as National Women Veterans Recognition Week. I encourage all Americans and government officials at every level to celebrate this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88–26167
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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 515/Pub. L. 100-583

Fair Credit and Charge Card Disclosure Act of 1988. (Nov. 3, 1988; 102 Stat. 2960; 10 pages) Price: $1.00

H.R. 2472/Pub. L. 100-584

To provide authorization of appropriations for activities of the National Telecommunications and Information Administration. (Nov. 3, 1988; 102 Stat. 2970; 3 pages) Price: $1.00

H.R. 2642/Pub. L. 100-585

Colorado Ute Indian Water Rights Settlement Act of 1988. (Nov. 3, 1988; 102 Stat. 2973; 7 pages) Price: $1.00

H.R. 2806/Pub. L. 100-586

To amend the Federal Land Policy and Management Act of 1976, to permit temporary use for military purposes of public lands in Alaska managed by the Bureau of Land Management, Department of the Interior, and for other purposes. (Nov. 3, 1988; 102 Stat. 2980; 2 pages) Price: $1.00

H.R. 4064/Pub. L. 100-587

To amend title 28 of the United States Code to authorize the appointment of additional bankruptcy judges. (Nov. 3, 1988; 102 Stat. 2982; 1 page) Price: $1.00

H.R. 4068/Pub. L. 100-588

To amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes. (Nov. 3, 1988; 102 Stat. 2983; 1 page) Price: $1.00

H.R. 4124/Pub. L. 100-589

To authorize appropriations to carry out the Atlantic Striped Bass Conservation Act for fiscal years 1989 through 1991, and for other purposes. (Nov. 3, 1988; 102 Stat. 2984; 5 pages) Price: $1.00

H.R. 4174/Pub. L. 100-590

Small Business Administration Reauthorization and Amendment Act of 1988. (Nov. 3, 1988; 102 Stat. 2989; 22 pages) Price: $1.00

H.R. 4686/Pub. L. 100-591

Aviation Safety Research Act of 1988. (Nov. 3, 1988; 102 Stat. 3011; 7 pages) Price: $1.00

H.J. Res. 446/Pub. L. 100-592

Designating October 30 through November 5, 1988, as "National Jukebox Week." (Nov. 3, 1988; 102 Stat. 3018; 1 page) Price: $1.00

H.J. Res. 572/Pub. L. 100-593

Designating November 28 through December 2, 1988, as "Vocational-Technical Education Week." (Nov. 3, 1988; 102 Stat. 3019; 2 pages) Price: $1.00

S. 1048/Pub. L. 100-594

Federal Communications Commission Authorization Act of 1988. (Nov. 3, 1988; 102 Stat. 3021; 5 pages) Price: $1.00

S. 1476/Pub. L. 100-595

To designate the Federal Records Center Extension Building 109 under construction in Overland, Missouri, as the "Charles F. Prevedel Federal Building." (Nov. 3, 1988; 102 Stat. 3026; 1 page) Price: $1.00

S. 1827/Pub. L. 100-596

To designate the Federal building and United States courthouse located at 300 Booth Street in Reno, Nevada, as the "C. Clifton Young Federal Building and United States Courthouse." (Nov. 3, 1988; 102 Stat. 3027; 1 page) Price: $1.00

S. 1863/Pub. L. 100-597

To amend the bankruptcy law to provide for special revenue bonds, and for other purposes. (Nov. 3, 1988; 102 Stat. 3028; 3 pages) Price: $1.00

S. 2344/Pub. L. 100-598

To reauthorize the Office of Government Ethics, and for other purposes. (Nov. 3, 1988; 102 Stat. 3031; 5 pages) Price: $1.00

S. 2835/Pub. L. 100-599

To designate the United States Post Office and Courthouse located at 151 West Street in Rutland, Vermont, as the "Robert T. Stafford United States Courthouse and Post Office." (Nov. 3, 1988; 102 Stat. 3036; 1 page) Price: $1.00

S.J. Res. 280/Pub. L. 100-600

To designate the week of November 27, 1988 through December 3, 1988 as "National Home Care Week." (Nov. 3, 1988; 102 Stat. 3037; 1 page) Price: $1.00

S.J. Res. 302/Pub. L. 100-601

To designate October 1988 as "National Down Syndrome Month." (Nov. 3, 1988; 102 Stat. 3038; 1 page) Price: $1.00

S.J. Res. 324/Pub. L. 100-602

To designate February 1989 as "America Loves Its Kids Month." (Nov. 3, 1988; 102 Stat. 3039; 1 page) Price: $1.00

S.J. Res. 335/Pub. L. 100-603

To designate the last full week of October, October 23 through October 29, 1988, as "National Adult Immunization Awareness Week." (Nov. 3, 1988; 102 Stat. 3040; 2 pages) Price: $1.00

S.J. Res. 381/Pub. L. 100-604

To designate October 30, 1988, as "Fire Safety at Home Day—Change Your Clock, Change Your Battery." (Nov. 3, 1988; 102 Stat. 3042; 1 page) Price: $1.00